

EXHIBIT 61

Ridout, C. Benny

December 5, 2008

Raleigh, NC

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Master File No.
LITIGATION) 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO:) Judge Patti B.
United States of America ex) Saris
rel. Ven-A-Care of the Florida)
Keys, Inc., et al. v. Dey,)
Inc., et al., Civil Action No.)
05-11084-PBS)

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Video Deposition of C. BENNY RIDOUT,
taken by the Defendants, at the Hilton North
Raleigh, 3415 Wake Forest Road, Boardroom, Raleigh,
North Carolina, on the 5th day of December, 2008 at
9:10 a.m., before Marisa Munoz-Vourakis, Registered
Merit Reporter, Certified Realtime Reporter and
Notary Public.

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Ridout, C. Benny

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|---|---|
| <p>1 the gap on those. Well, they went to ASP for</p> <p>2 Medicare drugs in physician's office to get rid</p> <p>3 of that type thing, average selling prices, they</p> <p>4 changed the methodology of pricing because of</p> <p>5 that.</p> <p>6 Q. You mentioned that it was common</p> <p>7 knowledge that Vancomycin had a spread, do I have</p> <p>8 that correct?</p> <p>9 MS. HAYES: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. When was it common knowledge that</p> <p>12 Vancomycin had a spread?</p> <p>13 A. I don't remember the year, just like it</p> <p>14 was this, but I just remember that drug was one</p> <p>15 of the antibiotics.</p> <p>16 Q. Do you recall whether it was similarly</p> <p>17 common knowledge that infusion products had</p> <p>18 spreads?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 MS. HAYES: Objection, form.</p> <p>21 A. We had no idea what the specialty</p> <p>22 pharmacists were paying for that drug, what kind</p> | <p>1 manufacturers to be able to do it or something.</p> <p>2 That was just my own personal feeling. How did</p> <p>3 they do it?</p> <p>4 Q. And the significance of their ability</p> <p>5 to get special deals would be that they could</p> <p>6 make profit on the drug ingredient cost, right?</p> <p>7 MS. YAVELBERG: Objection to form.</p> <p>8 MS. HAYES: Objection to form.</p> <p>9 A. I have no idea what profit they made or</p> <p>10 what they were doing. I just know that nobody</p> <p>11 does anything for a loss. You wouldn't stay in</p> <p>12 business.</p> <p>13 Q. Let's take a couple of steps back.</p> <p>14 Could you describe for the jury when</p> <p>15 you talk about specialty pharmacies, what are you</p> <p>16 referring to?</p> <p>17 A. Well, there's pharmaceutical companies,</p> <p>18 pharmaceutical providers, excuse me, they will</p> <p>19 take drugs that will require a lot of attention</p> <p>20 and effort that have to be mixed and have to be</p> <p>21 stored and have to be administered by a highly-</p> <p>22 trained person, such as the chemotherapy drugs,</p> |
| Page 63 | Page 65 |
| <p>1 of deals they struck with the manufacturers, but</p> <p>2 it was of their opinion of us that there was some</p> <p>3 kind of spread in there because of what they were</p> <p>4 able to do that a regular pharmacist couldn't do</p> <p>5 at AWP. You see, we still paid at AWP.</p> <p>6 Q. What do you mean what they could do</p> <p>7 that other pharmacists couldn't?</p> <p>8 A. Infusion drugs is a whole lot more than</p> <p>9 just putting a pill in a bottle. You got to</p> <p>10 prepare. In fact, the pharmacists wanted a</p> <p>11 special fee to do this under-the-hood</p> <p>12 preparation, you know, also injection takes</p> <p>13 longer, you got to have syringe and all the stuff</p> <p>14 to do that. Of course they were shipping that on</p> <p>15 top of the cost to ship the product.</p> <p>16 So if you add up all that extra cost in</p> <p>17 a regular pharmacy or regular pills, you know,</p> <p>18 you think well, how in the world can they afford</p> <p>19 to do this and accept that same price?</p> <p>20 Q. What was your conclusion?</p> <p>21 A. That somehow they were getting some</p> <p>22 kind of special deal back or discount from the</p> | <p>1 some of the asthmatic drugs, some of the</p> <p>2 specialty diseases. And they will go in and say,</p> <p>3 you know, here's a niche, we will carve this out</p> <p>4 and we will provide this to Medicaid as a service</p> <p>5 because the local pharmacists can't do that. He</p> <p>6 doesn't go into a person's home. He doesn't send</p> <p>7 a nurse out. They have a nurse on the team that</p> <p>8 will go in and administer that drug for that</p> <p>9 patient.</p> <p>10 So it's more involved than just</p> <p>11 dispensing a drug like a regular pharmacist does.</p> <p>12 So they are called specialty pharmacists.</p> <p>13 Q. So the jury understands, when you refer</p> <p>14 to these specialty drugs, are they in pill form?</p> <p>15 A. No, most of the time they are.</p> <p>16 Q. What form are they taken?</p> <p>17 A. They would either be injections or</p> <p>18 infusions, inhalation drugs.</p> <p>19 Q. Could you explain to the jury what</p> <p>20 infusion and inhalation are?</p> <p>21 A. Inhalation would be a drug that is</p> <p>22 administered through breathing apparatus, like an</p> |

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| <p>1 implementing the MAC changes and stuff that we 2 were talking about with state MACs, which I 3 wasn't going to be involved in those later. 4 So I let the new person get involved 5 with those, and so I probably very well didn't 6 see this, seriously. 7 Q. Who was the new person? 8 A. Sharman Limewand, L-I-M-E-W-A-N-D; W-A- 9 N -- gosh, I can't spell her name, S-H-A-R-M-A-N, 10 Sharman, Limewand. 11 Q. Limewand? 12 A. Yeah, Limewand. She's no longer there 13 now. She didn't make it but a couple of years. 14 They replaced her with Tom D'Andre. 15 Q. So while Ms. Limewand took over your 16 position, if mail came in addressed to you, she 17 would review it? 18 A. That's right. 19 MS. YAVELBERG: Objection to form. 20 MS. HAYES: Objection to form. 21 MR. KATZ: I don't have any further 22 questions.</p> | <p>1 SIGNATURE OF THE WITNESS 2 3 4 5 6 7 8 9 C. BENNY RIDOUT 10 11 12 SUBSCRIBED AND SWORN to before me this _____ 13 day of _____, 2008. 14 15 16 17 18 NOTARY PUBLIC 19 20 My Commission expires: _____ 21 22</p> |
| Page 351 | Page 353 |
| <p>1 A. She had the position. She would have 2 forwarded it to me. It was meant for the person 3 in that position, not to the person whose name on 4 it. I wouldn't have had anything to do with it 5 at that point. 6 MR. KATZ: I have no further questions. 7 MS. YAVELBERG: No further questions, 8 Mr. Cook? 9 MR. COOK: No. 10 MS. YAVELBERG: Thank you, Mr. Ridout. 11 We are off the record. 12 THE VIDEOGRAPHER: This concludes the 13 deposition of C. Benny Ridout. The time is 5:18 14 p.m., we are off the record. 15 (Whereupon the deposition was 16 concluded at 5:18 p.m.) 17 (Signature reserved.) 18 19 20 21 22</p> | <p>1 C E R T I F I C A T E 2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public, 3 the officer before whom the foregoing proceeding was 4 conducted, do hereby certify that the witness(es) whose 5 testimony appears in the foregoing proceeding were duly 6 sworn by me; that the testimony of said witness(es) were 7 taken by me to the best of my ability and thereafter 8 transcribed under my supervision; and that the foregoing 9 pages, inclusive, constitute a true and accurate 10 transcription of the testimony of the witness(es). 11 I do further certify that I am neither counsel for, 12 related to, nor employed by any of the parties to this 13 action in which this proceeding was conducted, and 14 further, that I am not a relative or employee of any 15 attorney or counsel employed by the parties thereof, nor 16 financially or otherwise interested in the outcome of the 17 action. 18 IN WITNESS WHEREOF, I have hereunto subscribed my name 19 this of _____, 2008. 20 21 MARISA MUNOZ-VOURAKIS 22 Notary #20032900127</p> |

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EXHIBIT 62

Rieger, Richard

August 9, 2007

Chicago, IL

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL) MDL DOCKET NO.
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01CV12257-PBS

Videotaped Deposition of RICHARD
RIEGER, at 77 West Wacker Drive,
Chicago, Illinois, commencing at
9:00 a.m. on Thursday, August 9, 2007,
before Donna M. Kazaitis, RPR, CSR
No. 084-003145.

Henderson Legal Services
202-220-4158

Rieger, Richard

August 9, 2007

Chicago, IL

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| <p style="text-align: right;">Page 18</p> <p>1 responsibility that was being given to me. 2 Q. In earlier testimony you were describing 3 the Medicare Working Group and you used the word 4 it was brought together. Do you recall that? 5 A. I don't recall that specific language. 6 Q. Okay. Well, let me ask the question 7 this way: Who brought the Medicare Working Group 8 together? 9 A. So to give you the context of this, I 10 worked in corporate development and one of the 11 tasks that we had in corporate development was to 12 lead cross-divisional initiatives. 13 So, for instance, there was 14 initiatives in diabetes, in cardiovascular, 15 women's health, vaccines, there was a variety of 16 different areas. And then in addition to that, 17 there was this Medicare Working Group. So it was 18 brought together at a corporate level. 19 I don't know where it was initiated 20 in terms of whether it was Mr. Miller's boss or 21 his boss, but it was our responsibility given that 22 we were in a corporate function and we were tasked</p> | <p style="text-align: right;">Page 20</p> <p>1 The idea was to just basically tap 2 into the knowledge of people who had jobs that 3 related to Medicare and bring them together to 4 share and exchange information about their 5 experiences so that a colleague from Division A 6 may have knowledge that could help a colleague 7 from Division B. 8 BY MR. SISNEROS: 9 Q. Who gave you your assignment? 10 A. It was given to me by Jim Miller. 11 Q. And Jim Miller was your supervisor? 12 A. He was my direct supervisor, yes. 13 Q. And Mr. Miller supervised you when you 14 first started in November of 1996? 15 A. Yes. 16 Q. For what time period was Mr. Miller your 17 supervisor? 18 A. He was my supervisor until I moved to 19 the Pharmaceutical Products Division, which was in 20 the early part of 1998. I think I moved in 21 January. So it was around fifteen months where he 22 was my supervisor.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 with running these cross-divisional teams. 2 Q. So if I understand correctly, the 3 Medicare Working Group would have been initiated 4 at the corporate level? 5 A. Yes. 6 Q. Do you know the circumstances 7 surrounding the initiation of the Medicare Working 8 Group at the corporate level? 9 A. If you could clarify what you mean by 10 "circumstances," I would appreciate that. 11 Q. Why was the Medicare Working Group 12 formed at the corporate level? 13 MS. RUSSO: Objection to form. 14 THE WITNESS: Well, it was for the 15 reason I said. It's hard to create 16 cross-divisional initiatives within a division. 17 So, for instance, if the Pharmaceutical Products 18 Division had wanted to create a cross-divisional 19 initiative, they weren't really in a position to 20 do that. So at a corporate level, because we're 21 not part of a division, we were tasked with doing 22 that.</p> | <p style="text-align: right;">Page 21</p> <p>1 Q. All right. Now, when was your last 2 involvement with the Medicare Working Group? 3 A. It was sometime during 1997. 4 Q. First part, middle part, last part of 5 1997? 6 A. I don't recall exactly. I know that the 7 group was losing momentum during the first half of 8 1997 and at some point it effectively disbanded. 9 So I would say it was the early, probably the 10 middle part of 1997. 11 Q. Now, who was Mr. Miller's supervisor? 12 A. Steve Weger. 13 Q. You testified Miller is the one that 14 assigned you this job. 15 A. Yes. 16 Q. What were his instructions to you? 17 A. His instructions were to basically lead 18 a cross-divisional initiative that we would call 19 the Medicare Working Group. And, as I said, the 20 objective was largely information sharing between 21 the different divisional representatives. 22 Q. Were there other identified objectives</p> |

6 (Pages 18 to 21)

Rieger, Richard

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Chicago, IL

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| <p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. If you could compare the first page of</p> <p>3 that Exhibit Miller 1162 and the second page, the</p> <p>4 same individuals are listed in both lists; is that</p> <p>5 right?</p> <p>6 A. Yes. That appears to be the case.</p> <p>7 Q. And as far as I can tell, would you</p> <p>8 agree that the only difference between the top</p> <p>9 page and the second page is that in the first page</p> <p>10 the individuals are identified with the division</p> <p>11 within Abbott from where they come or where they</p> <p>12 work?</p> <p>13 MS. RUSSO: Objection, form.</p> <p>14 MR. SISNEROS: Let me restate it.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. The only difference between Page 1 and</p> <p>17 Page 2 of Exhibit Miller 1162 is that the first page</p> <p>18 identifies the division where these individuals</p> <p>19 worked; is that correct?</p> <p>20 MS. RUSSO: Objection to form. Go</p> <p>21 ahead.</p> <p>22 THE WITNESS: No. It doesn't identify</p> | <p style="text-align: right;">Page 28</p> <p>1 as well and you're listed second in there; right?</p> <p>2 A. Yes.</p> <p>3 Q. Cathy Babington, do you remember her?</p> <p>4 A. Yes.</p> <p>5 Q. What do you remember about her with</p> <p>6 regard to her activities with the Medicare Working</p> <p>7 Group?</p> <p>8 A. I remember that she was an occasional</p> <p>9 participant in our Medicare Working Group</p> <p>10 meetings.</p> <p>11 Q. What do you mean by "occasional"?</p> <p>12 A. Even though these were the key</p> <p>13 participants, not every person attended every</p> <p>14 meeting.</p> <p>15 Q. Okay.</p> <p>16 A. So in other words, we generally had a</p> <p>17 subset of these people who would attend any</p> <p>18 particular meeting. The meetings were spaced out</p> <p>19 about every thirty days to forty-five days or</p> <p>20 thereabouts and we would get some subset of these</p> <p>21 people depending on who was in town and who was</p> <p>22 available. So Ms. Babington participated in some</p> |
| <p style="text-align: right;">Page 27</p> <p>1 the divisions where they, oh, I'm sorry, in the</p> <p>2 left-hand side it does.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. Otherwise, they're the same individuals?</p> <p>5 A. It's the same individuals, it shows</p> <p>6 their department numbers on both pages, and</p> <p>7 buildings where they worked. And the front page</p> <p>8 indicates the divisions where they worked, which</p> <p>9 is not indicated on the second page.</p> <p>10 Q. Okay. And the folks listed in Exhibit</p> <p>11 Miller 1162 were the folks that worked in the</p> <p>12 Medicare Working Group; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Earlier testimony -- well, strike that.</p> <p>15 Let me ask you these questions:</p> <p>16 I'm going to go down the list member-by-member.</p> <p>17 Jim Miller you identified as your supervisor; is</p> <p>18 that right?</p> <p>19 A. Yes.</p> <p>20 Q. You remember Mr. Miller?</p> <p>21 A. Yes.</p> <p>22 Q. Of course you were a member of the group</p> | <p style="text-align: right;">Page 29</p> <p>1 meetings, she did not participate in other</p> <p>2 meetings.</p> <p>3 Q. With regard to your participation with</p> <p>4 the folks in the Medicare Working Group, were</p> <p>5 there any activities relating to the work of the</p> <p>6 Medicare Working Group that occurred outside of</p> <p>7 these meetings?</p> <p>8 A. Yes.</p> <p>9 Q. What kind of activity?</p> <p>10 A. So people would do research. So we</p> <p>11 would come together as a working group. We would</p> <p>12 discuss a particular topic or topics. Then there</p> <p>13 was sometimes follow-up that was generated from</p> <p>14 those meetings, and then that follow-up would be</p> <p>15 assigned to one or more individuals within the</p> <p>16 working group.</p> <p>17 They would do that follow-up, and</p> <p>18 then often times they would either distribute the</p> <p>19 follow-up materials directly to the working group</p> <p>20 or since I was the coleader at the time, they</p> <p>21 would send the materials to me and then I would</p> <p>22 distribute those materials out to the team.</p> |

8 (Pages 26 to 29)

Rieger, Richard

August 9, 2007

Chicago, IL

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| <p style="text-align: right;">Page 342</p> <p>1 Q. Okay.</p> <p>2 A. So he wrote this but he probably would</p> <p>3 have walked me through it just to make sure that I</p> <p>4 get caught up on what was discussed. But I don't</p> <p>5 remember a specific conversation, but I think that</p> <p>6 it would have been the customary thing for him and</p> <p>7 I to do.</p> <p>8 Q. Do you know what the significance of the</p> <p>9 Medicare Working Group coming to a consensus about</p> <p>10 an alternative to AWP-based reimbursement would be</p> <p>11 if this consensus wasn't shared with anyone or</p> <p>12 further steps weren't taken to act on it?</p> <p>13 A. No.</p> <p>14 MS. RUSSO: Objection to form.</p> <p>15</p> <p>16 BY MS. FORD:</p> <p>17 Q. Do you know if the acquisition cost plus</p> <p>18 alternative remained Abbott's position, or the</p> <p>19 Medicare Working Group's position I should say?</p> <p>20 MS. RUSSO: Objection to form.</p> <p>21 THE WITNESS: No. I don't know what the</p> <p>22 position was.</p> | <p style="text-align: right;">Page 344</p> <p>1 A. Right.</p> <p>2 Q. The first heading is titled Lupron, is</p> <p>3 that right, of the minutes?</p> <p>4 A. Yes, it is.</p> <p>5 Q. Then the first entry talks about TAP</p> <p>6 filing a lawsuit as a result of potential</p> <p>7 reimbursement changes to Lupron; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then it indicates that "for details</p> <p>10 regarding the lawsuit, please see the attached</p> <p>11 Question & Answer document which has been provided</p> <p>12 by Abbott's Public Affairs department"; is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know why Abbott's Public Affairs</p> <p>16 department would be putting out information about</p> <p>17 TAP and its lawsuit?</p> <p>18 A. No, I don't.</p> <p>19 MS. RUSSO: Objection, form.</p> <p>20 BY MS. FORD:</p> <p>21 Q. Do you know, for example, whether TAP</p> <p>22 had its own Public Affairs department or whether</p> |
| <p style="text-align: right;">Page 343</p> <p>1 BY MS. FORD:</p> <p>2 Q. I mean you understand that, well, going</p> <p>3 back to the minutes, it says "The group consensus</p> <p>4 was that 'acquisition cost plus' would be the</p> <p>5 least unfavorable alternative to current</p> <p>6 Abbott/TAP business."</p> <p>7 A. Yes. That's what that says, yes.</p> <p>8 Q. Right.</p> <p>9 So my question is do you know if</p> <p>10 that remained the Medicare Working Group's</p> <p>11 position, that of the alternatives that were</p> <p>12 discussed and that are discussed in the memo, that</p> <p>13 was the least unfavorable to current business?</p> <p>14 A. Yeah, and I don't know if that remained</p> <p>15 the position or not.</p> <p>16 Q. You just don't recall one way or the</p> <p>17 other?</p> <p>18 A. I don't recall one way or the other,</p> <p>19 yes.</p> <p>20 Q. Okay. If you can take a look at Exhibit</p> <p>21 Miller 1166. I believe that's the minutes of the</p> <p>22 April 17, 1997 Medicare Working Group meeting.</p> | <p style="text-align: right;">Page 345</p> <p>1 that was a shared resource?</p> <p>2 A. I am aware because I was a TAP employee,</p> <p>3 TAP had a separate Public Affairs group.</p> <p>4 Q. Do you know at the time of these minutes</p> <p>5 in April of '97 whether TAP had its own Public</p> <p>6 Affairs group?</p> <p>7 A. Yeah, I should clarify that. I'm aware</p> <p>8 that when I went over to TAP in 2003 that they had</p> <p>9 a Public Affairs group. Whether that same</p> <p>10 structure existed prior to that during this time</p> <p>11 period, I don't know.</p> <p>12 Q. Okay. And if you can take a look at</p> <p>13 Exhibit Miller 1165, which is the handwritten note</p> <p>14 from Mr. Miller to you, I believe you testified</p> <p>15 earlier that you believe Mr. Miller was providing you</p> <p>16 the information contained in this note; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know for what purpose he was</p> <p>20 providing you the information?</p> <p>21 A. Not specifically.</p> <p>22 Q. Is it possible that he was giving you</p> |

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Rieger, Richard

August 9, 2007

Chicago, IL

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|---|--|
| <p style="text-align: right;">Page 382</p> <p>1 from secondary research; correct?</p> <p>2 MS. FORD: Objection to form.</p> <p>3 THE WITNESS: Yeah. I'll restate just</p> <p>4 to be crystal clear. I did secondary research, I</p> <p>5 had discussions with other Medicare Working Group</p> <p>6 members, and I could have learned about that from</p> <p>7 one or the other or both.</p> <p>8 MS. RUSSO: All right. No further</p> <p>9 questions.</p> <p>10 And I'd just like to note for the</p> <p>11 record our objection to the MDL plaintiffs' class</p> <p>12 counsel asking questions after discovery has</p> <p>13 closed, I'm sorry, participating in this</p> <p>14 deposition after discovery has closed. That's it.</p> <p>15 What do you want to do about</p> <p>16 signature?</p> <p>17 MR. DE SANTO: We'll reserve signature.</p> <p>18 Will you make a copy available? You don't need to</p> <p>19 send it to me because I don't think I need to be</p> <p>20 doing anything anymore. (Indicating to Counsel</p> <p>21 Russo.)</p> <p>22 THE WITNESS: Do I have to read it and</p> | <p style="text-align: right;">Page 384</p> <p>1 STATE OF ILLINOIS)</p> <p>2 COUNTY OF C O O K)</p> <p>3 I, Donna M. Kazaitis, RPR, CSR No.</p> <p>4 084-003145, do hereby certify:</p> <p>5 That the foregoing deposition of RICHARD</p> <p>6 RIEGER was taken before me at the time and place</p> <p>7 therein set forth, at which time the witness was</p> <p>8 put under oath by me;</p> <p>9 That the testimony of the witness and all</p> <p>10 objections made at the time of the examination</p> <p>11 were recorded stenographically by me, were</p> <p>12 thereafter transcribed under my direction and</p> <p>13 supervision and that the foregoing is a true</p> <p>14 record of same.</p> <p>15 I further certify that I am neither counsel</p> <p>16 for nor related to any party to said action, nor</p> <p>17 in any way interested in the outcome thereof.</p> <p>18 IN WITNESS WHEREOF, I have subscribed my name</p> <p>19 this 19th day of August, 2007.</p> <p>20</p> <p>21 _____</p> <p>22 Donna M. Kazaitis, RPR, CSR 084-003145</p> |
| <p style="text-align: right;">Page 383</p> <p>1 sign it?</p> <p>2 MR. DE SANTO: Yes. We're going to</p> <p>3 reserve just to make sure that everything was</p> <p>4 taken down accurately.</p> <p>5 THE WITNESS: All right. Just give me a</p> <p>6 little lead time for it. Don't expect an</p> <p>7 overnight read.</p> <p>8 MS. RUSSO: Okay.</p> <p>9 THE VIDEOGRAPHER: We are off the record</p> <p>10 at 6:05 p.m. with the conclusion of the deposition</p> <p>11 of Mr. Richard Rieger.</p> <p>12 (WHEREUPON said deposition was so</p> <p>13 concluded.)</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 SIGNATURE OF THE WITNESS</p> <p>18 Subscribed and sworn to and before me</p> <p>19 this _____ day of _____, 20____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p> | |

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EXHIBIT 63

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
BRUCE E. RODMAN
August 29, 2007

Volume 1

HIGHLY CONFIDENTIAL

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1 service that has to do -- that requires clinical
2 pharmacists, who are quite involved with advising the
3 physicians who are ordering the medications, in
4 monitoring and interpreting and advising physicians on
5 lab results, through sometimes others in the
6 organization or others outside, such as nurses or
7 people within the pharmacy that are following up with
8 patients and listening if there are particular
9 problems or issues that the patients are bringing up.

10 The pharmacy -- pharmacists do a lot of
11 quality control checking. The drug themselves are
12 quite often compounded in a sterile clean room. And
13 the -- the -- actually, the -- the -- the billing that
14 is the reimbursement process for home infusion therapy
15 is -- is very complicated and difficult. And in order
16 to provide the home infusion therapy service to a
17 patient, it requires quite a few people on it.

18 And it also requires administration,
19 supplies, tubing, that sort of thing, needles and
20 equipment such as infusion pumps. And those are not
21 free in terms of -- you know, obviously there's a high
22 cost. If you were to tour a home infusion pharmacy
23 facility, it will depend clearly on the size of the
24 patients, you know, their census, if you will. But if
25 you were to tour, you walk, you are going to see a ton

Page 19

1 of people there and it's going to be a very different
2 experience from looking -- from walking into any
3 retail community pharmacy.

4 And so in order to provide the service,
5 there has to be reimbursement for them that is
6 adequate for them to provide the service and stay in
7 business. And part of that service is -- part of --
8 part of providing that is a margin that would be
9 achieved, i.e., a profit, gross profit, if you will,
10 the difference between what they may have paid for a
11 drug as compared to what they were reimbursed for the
12 drug.

13 And it is -- there are -- there are
14 other ways, you know, other billing aspects of home
15 infusion therapy, also, in addition to billing for the
16 drug, but they all add up to provide a necessary
17 return for them to provide the service. So that's
18 what I meant.

19 Q. Okay. And why did Mr. Sellers -- strike
20 that.

21 What did you mean when you said that
22 Mr. Sellers asked for an organization or entity that
23 would be helpful?

24 A. You know, I can't tell you word for word our
25 conversation because I don't have that type of memory,

Page 20

1 but generally I can tell you my recollections, which
2 were that he was wanting to see if it's possible to
3 get, either from the association or a provider, you
4 know, or whatever individuals that might be willing to
5 make some sort of statement to attest to the type of
6 information that I just said, which is that the margin
7 that would be made for -- by the provider from a drug
8 was one of the necessary aspects of being able to stay
9 in business.

10 Q. Did he -- strike that.

11 When you say "margin," how is the margin
12 achieved?

13 A. Well, I guess I would define the margin in
14 this case as gross margin being the difference between
15 what the drug when it's billed is reimbursed for as
16 compared to what it cost the provider.

17 Q. And are you aware of drugs being billed at
18 AWP rates?

19 A. The predominant methodology -- well, the
20 predominant methodology in -- in this -- in this
21 business of the aspect of the billing for billing of
22 the drugs has been based on an average wholesale price
23 figure.

24 Q. And when you say "average wholesale price"
25 and I say "AWP," are we talking about --

Page 21

1 A. Yes, we are.

2 Q. -- the same thing?

3 A. Yes.

4 Q. Okay. One other thing I don't think I said
5 is -- is when I -- I'm going to try when you're giving
6 an answer not to talk over you.

7 A. Okay.

8 Q. If you could do the same for me just because
9 it's very difficult for our court reporter to take
10 down two people talking at the same time. Okay?

11 A. I will try.

12 Q. Okay.

13 MR. STETLER: You anticipated her
14 question, you got it right, but it may not always be
15 the case. So let her -- just let her finish, that's
16 all. You may sneak a nod in there at the end.

17 Q. (BY MS. ST. PETER-GRIFFITH) Okay. So you
18 understood that the predominant methodology for
19 reimbursement is based upon average wholesale price or
20 AWP.

21 A. Well, I understand that extremely well now.

22 Q. Okay. What do you mean by that?

23 A. Well, one of the things I want you to
24 understand is that in my experience at Abbott Home
25 Infusion, I started with that business unit in

6 (Pages 18 to 21)

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| | |
|--|---|
| <p style="text-align: right;">Page 22</p> <p>1 January of 1993 and spent approximately five years as 2 being a reimbursement supervisor and I was learning 3 the business. And this is a -- this is not an easy 4 business to learn. And after approximately 1998 I was 5 doing other things that were not directly related to 6 the reimbursement. 7 But in any event, when I left Abbott and 8 began consulting and ultimately took a position for 9 the National Home Infusion Association, you know, I 10 learn every day. And, you know, my knowledge in 11 general about these aspects of reimbursement and other 12 aspects of the home infusion therapy business on the 13 provider side, at least, is far more than what I knew 14 in those five years as reimbursement supervisor at 15 Abbott. 16 So, I'm sorry, what was your question? 17 Q. No. Well -- 18 A. I related to it. 19 Q. -- now I have another question for you. 20 A. Okay. 21 Q. How is it that -- that your knowledge now, 22 based upon the position that you're in now regarding 23 reimbursement, has either grown or changed from what 24 it was when you were reimbursement supervisor at 25 Abbott?</p> | <p style="text-align: right;">Page 24</p> <p>1 aspects. 2 One is that specifically with relating 3 to drug pricing in the industry and the importance of 4 that and, perhaps, the evolving mystery of it and an 5 understanding of just what AWP is at this point is far 6 more than I understood in those five years that I was 7 responsible for a portion of the reimbursement in 8 Abbott. 9 The second is I have, I think, a 10 better -- a much better appreciation of the importance 11 of all of the aspects of how providers bill, i.e., the 12 importance of, you know, how they do claims, what they 13 bill for and how that all adds up necessary for them 14 to have -- have appropriate margins so that they can 15 stay in business. 16 You know, can I give you specifics? 17 Maybe if you ask some real questions that are 18 specific, I might be able to answer something. But in 19 general -- 20 Q. Okay. 21 A. -- I just know a lot more now than I did 22 then. 23 Q. Okay. What is your understanding of what AWP 24 is? 25 A. Now?</p> |
| <p style="text-align: right;">Page 23</p> <p>1 MS. FUMERTON: Objection, form. 2 Q. (BY MS. ST. PETER-GRIFFITH) Oh, I also -- 3 MR. STETLER: Ignore that. 4 Q. (BY MS. ST. PETER-GRIFFITH) Forgot to tell 5 you that she -- 6 MR. STETLER: She'll object. 7 Q. (BY MS. ST. PETER-GRIFFITH) That every once 8 in a while Ms. Fumerton might have an objection. 9 Unless Mr. Stetler instructs you not to answer, if you 10 could respond to my question that I asked. 11 A. So what did we just say? I am or am not -- 12 MR. STETLER: She'll object and unless I 13 say something, which would be rare, indeed, you just 14 kind of ignore it and answer the question. 15 MS. FUMERTON: My objection -- 16 MR. STETLER: It's a legal thing. 17 MS. FUMERTON: My objection is to her 18 questions, not to anything that you're saying. So it 19 doesn't really actually involve you, but I just wanted 20 to explain that. 21 A. Please ask the question again. 22 MS. ST. PETER-GRIFFITH: Sure. Can you 23 read it back, Cindy? 24 (Requested portion was read) 25 A. I think I would like to answer that in two</p> | <p style="text-align: right;">Page 25</p> <p>1 Q. Yes. 2 A. It is a benchmark that is published by now 3 three drug compendiums that is identified with drugs 4 by NDC numbers, drug by drug by drug. That it is 5 something that is -- been a mystery as to how those 6 compendiums actually develop AWP, that there's been 7 media controversy about it and lawsuits about it, but 8 it still is the predominant method throughout most 9 payers for home infusion providers through which the 10 billings that they submit on claims for drugs are paid 11 with and these days there's typically a steep discount 12 for most payers off of that published AWP price. 13 Q. Do you know why there's a steep discount or 14 do you have an understanding as to why? 15 A. I guess what I can tell you is it's my 16 general impression and -- and that's all that I can 17 give you, that there is reimbursement for home 18 infusion in general and that includes the drug 19 billings specifically has been ratcheted back by 20 various payers over the last 15 years and that 21 includes AWP. 22 Q. Okay. What was your understanding of AWP 23 prior to your having this understanding? 24 MS. FUMERTON: Objection, form. 25 Q. (BY MS. ST. PETER-GRIFFITH) I mean --</p> |

7 (Pages 22 to 25)

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1 strike. Actually, let me ask this: Your
2 understanding of AWP that you just described, when did
3 you come to have that understanding of what AWP was?

4 A. Oh, that would be difficult to say, I guess.
5 I -- somewhere in the period of which -- and I think
6 it's the period that I was probably still a
7 reimbursement manager, but it could have been later.
8 I was reimbursement supervisor, but it could have been
9 later. I came to an understanding that AWP was not
10 what I had thought it was, was what Bruce Rodman
11 thought it was from the name.

12 Q. Okay. And what did you think AWP was?

13 A. I thought --

14 MS. FUMERTON: Objection, form.

15 A. -- from the name, not because anybody told
16 me, I just thought from the name that it was an
17 average based on statistical sampling or reporting or
18 something like that, but an average of what a
19 provider, in fact, would be paying to acquire a drug
20 from their source. Specifically from their
21 wholesaler.

22 Q. (BY MS. ST. PETER-GRIFFITH) Okay. And
23 what -- when did you have that understanding?

24 A. Well, certainly I would say through much of
25 those five years or so that I was the reimbursement

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1 supervisor.

2 Q. When you were the reimbursement supervisor
3 within the -- and we'll get into your employment
4 history for a second, but --

5 A. Uh-huh.

6 Q. -- when you were a reimbursement supervisor,
7 did you receive any training as to what AWP was or
8 what Abbott's understanding of AWP was?

9 A. Not that I can recall.

10 Q. Okay. I would like to circle back and round
11 out my questions concerning Mister -- your
12 conversation with Mr. Sellers. Do you remember
13 anything else concerning your conversation with
14 Mr. Sellers?

15 A. Not at that conversation. I did do some
16 follow up.

17 Q. Okay. And what did you do for follow up?

18 A. Well, you know, I do remember one more
19 thing --

20 Q. Sure.

21 A. -- actually, which was that, you know, I was
22 briefly thinking, well -- our -- our association's
23 executive director actually had just been in the
24 process of resigning and a new one was starting and,
25 you know, my first thought was, well, possibly if

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1 someone from the association was going to say
2 something, it was the executive director, but that
3 wouldn't be appropriate because the new executive
4 director was just starting to learn the business. So
5 I -- at least in my own mind I briefly thought, well,
6 maybe I could say something.

7 And I don't recall whether Mike Sellers
8 brought it up first or whether I said something, but
9 in any event, he said, "Well, that probably wouldn't
10 be appropriate" given that I had worked with Abbott
11 and I agreed with that, so I concurred.

12 So I did provide the names of two
13 individuals to Mike Sellers that he might follow up in
14 contact with.

15 Q. Okay. And do you know whether he did?

16 A. Yes. I talked to one of them and I know that
17 he did with one of them. And I do not know about the
18 other.

19 Q. Okay. What was your conversation with the
20 individual that you spoke with that Mr. Sellers
21 contacted?

22 A. That -- well, then I get the phone call from
23 Ms. Citera and that occurred after. So I did have a
24 conversation with this one individual at one point and
25 just said, you know, just -- just be careful that --

Page 29

1 don't run into more grief than you really want to. In
2 effect, that's what I said. I don't recall the exact
3 words.

4 Q. Who were you speaking to?

5 A. His name is Larry Robinson.

6 Q. Okay. And what is -- who is Mr. Robinson
7 affiliated with?

8 A. Well, he was affiliated at the time with the
9 home infusion business and I think some other home
10 businesses, also, for the Methodist Hospital in
11 Memphis, Tennessee. Their business name is Methodist
12 Alliance.

13 Q. And why did you make that comment to him?

14 A. Because I just try to operate prudently as
15 general practice and I got this request to do the
16 deposition, which I -- was a surprise to me, frankly,
17 and that it would take up some time. And I just
18 said -- you know, I just wanted to be -- you know,
19 Larry -- I consider Larry a friend. I just wanted to
20 let him know that he -- he'd want to just be careful
21 in that sense because it may take him some time that
22 he doesn't want to be involved with. It was that
23 simple.

24 You know, and, frankly, if -- if the
25 situation had been reversed and I had the phone call

8 (Pages 26 to 29)

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| | |
|--|--|
| <p style="text-align: right;">Page 258</p> <p>1 Q. Okay. The next binder?</p> <p>2 A. 4547 through 4800. This is called "Insurance</p> <p>3 Overview." It's got a date scratched here of 1997,</p> <p>4 originally 1996. This also at times must have been</p> <p>5 used for training Abbott staff and clients on aspects</p> <p>6 of reimbursement is what I would say.</p> <p>7 Q. And the next one? If you just give the Bates</p> <p>8 range.</p> <p>9 A. Well, the numbers are 4801 through 5108.</p> <p>10 It's also entitled "Insurance Overview." This, also,</p> <p>11 was probably used for the same purpose as the previous</p> <p>12 one to train Abbott staff and, perhaps, clients on</p> <p>13 reimbursement topics.</p> <p>14 Q. And the final?</p> <p>15 MR. STETLER: No, not the final.</p> <p>16 MS. ST. PETER-GRIFFITH: Oh, second to</p> <p>17 last.</p> <p>18 MR. STETLER: Second to last.</p> <p>19 Q. (BY MS. ST. PETER-GRIFFITH) If you could --</p> <p>20 A. Okay. Everything in the binder starts at</p> <p>21 5521. It ends at 5895. Meaning some of it is</p> <p>22 actually three-hole punched in the binder, others are</p> <p>23 materials.</p> <p>24 Q. Okay. And this binder is what? If you could</p> <p>25 describe it. I think there's a name on the spine.</p> | <p style="text-align: right;">Page 260</p> <p>1 adjourn for the day because I know Mr. Stetler has to</p> <p>2 leave and we're out of tape.</p> <p>3 MR. STETLER: Good.</p> <p>4 THE VIDEOGRAPHER: We're off the record</p> <p>5 at 4:15 p.m. The conclusion of this session of the</p> <p>6 deposition of Mr. Bruce E. Rodman.</p> <p>7</p> <p>8 (Deposition adjourned at 4:15 p.m.)</p> <p>9 (Signature waived)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 259</p> <p>1 MS. MOORE: On the spine.</p> <p>2 A. Well, I'm not seeing it yet. Oh. Well, it</p> <p>3 says "Medicare Enteral Billing." I'm not sure that's</p> <p>4 what it is, though.</p> <p>5 Q. Okay. And if you could just describe the</p> <p>6 next binder really quickly.</p> <p>7 A. Okay.</p> <p>8 MR. STETLER: No, this is (indicating)</p> <p>9 the next one.</p> <p>10 THE WITNESS: This being the next one?</p> <p>11 Okay.</p> <p>12 MR. STETLER: Let me hand you 5111</p> <p>13 through 5519.</p> <p>14 THE WITNESS: So I'm giving you this</p> <p>15 back. Thank you.</p> <p>16 Q. (BY MS. ST. PETER-GRIFFITH) And what --</p> <p>17 what -- if you could just describe what this is.</p> <p>18 A. This says "Medicare Part B PEN Manual."</p> <p>19 MS. ST. PETER-GRIFFITH: And this is the</p> <p>20 last binder, Mr. Stetler?</p> <p>21 MR. STETLER: It's the last binder.</p> <p>22 MS. ST. PETER-GRIFFITH: Okay.</p> <p>23 A. This also is a training manual having to do</p> <p>24 with aspects of reimbursement.</p> <p>25 MS. ST. PETER-GRIFFITH: Why don't we</p> | <p style="text-align: right;">Page 261</p> <p>1 STATE OF TEXAS)</p> <p>2 COUNTY OF TRAVIS)</p> <p>3</p> <p>4 I, CYNTHIA VOHLKEN, CSR #1059, do hereby</p> <p>5 certify that, pursuant to the agreement hereinabove</p> <p>6 set forth, there came before me on the 29th day of</p> <p>7 August, 2007, at 8:47 o'clock a.m., in the offices of</p> <p>8 Stetler & Duffy, LLP, 11 S. La Salle, Suite 1200,</p> <p>9 Chicago, Illinois, the following named person, to-wit:</p> <p>10 BRUCE E. RODMAN, who was by me duly sworn to testify</p> <p>11 to the truth and nothing but the truth of witness'</p> <p>12 knowledge touching and concerning the matters in</p> <p>13 controversy in this cause; that such witness was</p> <p>14 thereupon examined under oath, and the examination</p> <p>15 transcribed by computer-assisted transcription by me</p> <p>16 or under my supervision, and that the deposition is a</p> <p>17 true record of the testimony given by the witness.</p> <p>18 I further certify that I am neither attorney</p> <p>19 nor counsel for, nor related to or employed by, any of</p> <p>20 the parties to the action in which this deposition is</p> <p>21 taken and, further, that I am not a relative or</p> <p>22 employee of any attorney or counsel employed by the</p> <p>23 parties hereto, or financially interested in the</p> <p>24 action.</p> <p>25</p> |

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1 That the amount of time used by each party at
2 the deposition is as follows:

3 Ms. Ann St. Peter-Griffith - 05:50

4
5 IN WITNESS WHEREOF I have hereunto set my
6 hand on this 10th day of September, A.D. 2007.

7
8 
9

10 Cynthia Vohlken, Texas CSR 1059

11 Expiration Date: 12/31/2008

12 Firm Registration No. 82

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JOB NO. 2639

1 NO. D-1-GV-04-001286
2 THE STATE OF TEXAS) IN THE DISTRICT COURT

3)

4 ex rel.)

5 VEN-A-CARE OF THE)

6 FLORIDA KEYS, INC.,)

7 Plaintiffs,)

8)

9 VS.) TRAVIS COUNTY, TEXAS

10)

11 ABBOTT LABORATORIES INC.,)

12 ABBOTT LABORATORIES,)

13 HOSPIRA, INC., and B. BRAUN)

14 MEDICAL INC.,)

15 Defendant(s).) 201ST JUDICIAL DISTRICT

16 REPORTER'S CERTIFICATION

17 DEPOSITION OF BRUCE E. RODMAN

18 August 29, 2007

19 I, Cynthia Vohlken, Certified Shorthand

20 Reporter in and for the State of Texas, hereby certify

21 to the following:

22 That the witness, BRUCE E. RODMAN, was duly
23 sworn by the officer and that the transcript of the
24 oral deposition is a true record of the testimony
25 given by the witness;

That examination and signature of the witness
to the deposition transcript was waived by the witness
and agreement of the parties at the time of the
deposition.

That the amount of time used by each party at
the deposition is as follows:

Ms. Ann St. Peter-Griffith - 05:50

1 That \$ is the deposition officer's
2 charges to the Plaintiffs for preparing the original
3 deposition transcript and any copies of exhibits;

4 That pursuant to information given to the
5 deposition officer at the time said testimony was
6 taken, the following includes counsel for all parties
7 of record:

8 MS. ANN M. ST. PETER-GRIFFITH,

9 Attorney for Plaintiff United States of

America

10 MS. AMBER M. NESBITT,

11 Attorney for Plaintiff State of Arizona

and MDL Plaintiffs

12 MS. MARGARET MOORE, Attorney for Plaintiff

State of Texas

13 MR. TIMOTHY C. FOOTE, Attorney for

Plaintiff State of California

14 MS. TARA FUMERTON,

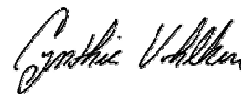
15 Attorney for Defendants Abbott

Laboratories, Inc. and Hospira, Inc.

16 That a copy of this certificate was served on
17 all parties shown herein on September 10, 2007 and
18 filed with the Clerk pursuant to Rule 203.3.

19 I further certify that I am neither counsel
20 for, related to, nor employed by any of the parties or
21 attorneys in the action in which this proceeding was
22 taken, and further that I am not financially or
23 otherwise interested in the outcome of the action.
24
25

1 Certified to by me this 10th day of
2 September, 2007.

3
4 
5

6 CYNTHIA VOHLKEN, TX CSR 1059

7 Expiration Date: 12/31/2009

8 Firm Registration No. 82

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16 Job No. 2639

EXHIBIT 64

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of California, ex rel.)
Ven-A-Care v. Abbott) Magistrate
Laboratories, et al.) Judge Marianne Bowler
Cause Nos. 03-cv-11226-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
BRUCE E. RODMAN
October 11, 2007
Volume 2

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1 A. I don't recall that that was -- I mean, do I
2 recall ever being told that that would be advantageous
3 and we should be doing that periodically? No, I don't
4 recall that.

5 MR. STETLER: I think her question was
6 did you suggest.

7 A. Did I suggest?

8 Q. (BY MS. THOMAS) Yes.

9 A. Oh, I don't recall suggesting that.

10 Q. Well, I mean, did it ever occur to you while
11 you were working there that, "Hey, we have people
12 selling to customers just like the ones we're getting
13 to know so well. We ought to tell them what we've
14 learned and -- and help them in their sales and
15 marketing effort"?

16 MR. COLE: Object to the form.

17 A. Not -- not -- certainly not as a primary or
18 even a secondary function of my job responsibility. I
19 talked earlier about how I talked about the
20 standardization of coding in the per diem area. It
21 occurred to me that that would be something that they
22 probably ought to understand, but also it was tooting
23 my horn a little bit, frankly, because it was an
24 industry accomplishment. So in that instance I could
25 have initiated that. But, no, not generally.

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1 Q. (BY MS. THOMAS) Do you have any recollection
2 while you worked in the Home Infusion Services
3 business of ever thinking that it might make sense for
4 someone at Abbott to communicate expertise gained from
5 Home Infusion Services to the people that were trying
6 to sell to some very similar types of clients?

7 A. I don't.

8 MR. COLE: Object. He's answered that
9 multiple times.

10 Q. (BY MS. THOMAS) Looking back at your time at
11 Abbott, do you have any idea why that didn't occur to
12 you?

13 MR. COLE: Object to the form.

14 A. The Home Infusion Services business unit
15 operated in many ways as a small business. We were
16 our own entity. We really didn't work with anybody
17 else in Abbott in particular to achieve our
18 objectives. So it was -- you know, call it a cultural
19 thing, call it whatever, we had our objectives.

20 Q. (BY MS. THOMAS) And, again, did you --

21 A. I mean, frankly, in some ways we competed
22 with them, so -- because some of -- you know. Their
23 customers would have been our customers. And if it
24 was their customers, then it would be through their
25 profit line. If it was our customers, it would be

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1 through Home Infusion Services, so ...

2 Q. Again, do you -- do you have any recollection
3 that that type of cross communication was discouraged?

4 A. I do not have that recollection.

5 Q. Now, you indicated with regard to these notes
6 that you think there's a couple of things on them that
7 are wrong. What jumped out at you?

8 A. "Medicare (Federal Aid Programs) have adopted
9 reimbursement to Per Diem" is incorrect. That's the
10 one that jumps out.

11 Q. You stated earlier in your answer that
12 Mr. Snouffer was quite involved in some analysis about
13 the decision made by Abbott to change its pricing?

14 MR. COLE: Object to the form.

15 A. I did state that earlier.

16 Q. (BY MS. THOMAS) Okay. Could you elaborate
17 on what you're referring to?

18 A. Well, I was really not very involved in that
19 because I was responsible for the CHIP system product
20 management types of things at the time, but he was
21 the -- the head person in the reimbursement at this
22 time. And there was a concern in terms of managing
23 the customers of what the impact might be of their
24 revenues and, hopefully, their profitability,
25 obviously. And he -- he was looking at that and I

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1 think he was running reports, and that sort of thing,
2 to try and determine that so that the business unit
3 could determine how best to manage the customer issues
4 that it created.

5 Q. Do you recall if there was any written
6 product generated by him or his staff?

7 A. I do not recall.

8 Q. Do you recall if there were any meetings
9 addressing the topic?

10 A. I do not recall.

11 Q. To your knowledge, was Mr. Snouffer doing
12 this analysis with respect to just Abbott Home
13 Infusion Services or also with respect to other
14 customers of Abbott's and thus the rest of Abbott's
15 business?

16 MR. COLE: Object to the form.

17 A. No. It would be respect to the Abbott Home
18 Infusion Services business relationships.

19 Q. (BY MS. THOMAS) Okay. As far as you know --

20 A. Only. As far as I know.

21 Q. Do you know whether anyone else at Abbott was
22 evaluating what impact it might have on Abbott's
23 business other than Home Infusion Services?

24 A. I have no specific knowledge of that.

25 Q. Now, when you identified the first factor

66 (Pages 523 to 526)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

Page 559

Page 561

1 That the amount of time used by each party at
 2 the deposition is as follows:
 3 Ms. Ann St. Peter-Griffith - 04:01
 4 Ms. Susan Thomas - 02:03
 5 Mr. Jeremy Cole - 00:01

6
 7 IN WITNESS WHEREOF I have hereunto set my
 8 hand on this 21st day of October, A.D. 2007.

9
 10
 11
 12
 13 Cynthia Vohlken, Texas CSR 1059
 14 Expiration Date: 12/31/2008
 15 Firm Registration No. 82
 16 Fredericks-Carroll Reporting
 17 7800 Shoal Creek Boulevard
 18 Suite 200 W
 19 Austin, Texas 78757
 20 Telephone: (512) 477-9911
 21 (800) 234-3376
 22 Fax: (512) 345-1417

23
 24
 25 JOB NO. 2771

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Page 562

1 NO. D-1-GV-04-001286
 2 THE STATE OF TEXAS) IN THE DISTRICT COURT
 3)
 4 ex rel.)
 5 VEN-A-CARE OF THE)
 6 FLORIDA KEYS, INC.,)
 7 Plaintiffs,)
 8)
 9 VS.) TRAVIS COUNTY, TEXAS
 10)
 11 ABBOTT LABORATORIES INC.,)
 12 ABBOTT LABORATORIES, and)
 13 HOSPIRA, INC.)
 14 Defendants.) 201ST JUDICIAL DISTRICT

15 REPORTER'S CERTIFICATION
 16 DEPOSITION OF BRUCE E. RODMAN
 17 October 11, 2007

18 I, Cynthia Vohlken, Certified Shorthand
 19 Reporter in and for the State of Texas, hereby certify
 20 to the following:

21 That the witness, BRUCE E. RODMAN, was duly
 22 sworn by the officer and that the transcript of the
 23 oral deposition is a true record of the testimony
 24 given by the witness;

25 That examination and signature of the witness
 to the deposition transcript was waived by the witness
 and agreement of the parties at the time of the
 deposition.

That the amount of time used by each party at
 the deposition is as follows:

Ms. Ann St. Peter-Griffith - 04:01
 Ms. Susan Thomas - 02:03
 Mr. Jeremy Cole - 00:01

1 That \$ is the deposition officer's
 2 charges to the Plaintiffs for preparing the original
 3 deposition transcript and any copies of exhibits;
 4 That pursuant to information given to the
 5 deposition officer at the time said testimony was
 6 taken, the following includes counsel for all parties
 7 of record:

8 MS. ANN M. ST. PETER-GRIFFITH,
 9 Attorney for Plaintiff United States of
 10 America
 11 MR. ELISEO SISNEROS, Attorney for
 12 Plaintiff State of California
 13 MS. MARGARET MOORE, Attorney for Plaintiff
 14 State of Texas
 15 MR. JEREMY COLE,
 16 Attorney for Defendants Abbott
 17 Laboratories, Inc. and Hospira, Inc.

18 That a copy of this certificate was served on
 19 all parties shown herein on October 22, 2007 and filed
 20 with the Clerk pursuant to Rule 203.3.

21 I further certify that I am neither counsel
 22 for, related to, nor employed by any of the parties or
 23 attorneys in the action in which this proceeding was
 24 taken, and further that I am not financially or
 25 otherwise interested in the outcome of the action.

1 Certified to by me this 22nd day of October,
 2 2007.

3
 4
 5 CYNTHIA VOHLKEN, TX CSR 1059
 6 Expiration Date: 12/31/2008
 7 Firm Registration No. 82
 8 Fredericks-Carroll Reporting
 9 7800 Shoal Creek Boulevard
 10 Suite 200 W
 11 Austin, Texas 78757
 12 Telephone: (512) 477-9911
 13 (800) 234-3376
 14 Fax: (512) 345-1417

15 Job No. 2771

75 (Pages 559 to 562)

FREDERICKS-CARROLL REPORTING

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EXHIBIT 65

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION) MDL No. 1456
_____) Civil Action No. 01-12257
)
THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
_____)
)
United States of America,)
ex res. Ven-A-Care of the)
Florida Keys, Inc. v. Abbott)
Laboratories, Inc.)
CIVIL ACTION NO. 06-11337-PBS)
)
)

VIDEO DEPOSITION OF DONALD C. ROBERTSON

DATE TAKEN: Thursday, September 13, 2007
TIME: 8:54 a.m. to 4:28 p.m.
BEHALF OF: The United States
PLACE TAKEN: United States Attorney's Office
2110 First Street,
Fort Myers, Florida
REPORTER: Lisa L. Rios, Court Reporter,
and Notary Public, State of
Florida at Large

MARTINA REPORTING SERVICES
Courtney Building, Suite 201
2069 First Street
Fort Myers, Florida 33901
(239) 334-6545
FAX (239) 332-2913

| | |
|---|--|
| <p style="text-align: right;">Page 142</p> <p>1 important.</p> <p>2 Q Rx link.</p> <p>3 A Rx link?</p> <p>4 Q Mm-hmm.</p> <p>5 A I've heard that term before, and it maybe involved</p> <p>6 the Hospital Business Sector.</p> <p>7 I don't remember its connection to Alternate Site,</p> <p>8 though.</p> <p>9 Q Catalog price.</p> <p>10 A Catalog price is, I assume, a list price for a</p> <p>11 product.</p> <p>12 Q And what is a list price? That was my next term.</p> <p>13 A Catalog price.</p> <p>14 It's the price that appears in published material</p> <p>15 from a company or organization of the list price that they</p> <p>16 charge or --</p> <p>17 Q That who charges?</p> <p>18 A The company publishing the pricing charges. That's</p> <p>19 their list price.</p> <p>20 Q Would Abbott have list prices?</p> <p>21 A Yes, ma'am.</p> <p>22 Q What would be the purpose of the list price?</p> <p>23 MS. CITERA: Objection to form.</p> <p>24 THE WITNESS: Well, list price is sort of a</p> <p>25 negotiating - a start of a negotiating position with a</p> | <p style="text-align: right;">Page 144</p> <p>1 someone is starting a business who has no affiliation or an</p> <p>2 individual wants a solution for a specific reason - I don't</p> <p>3 know.</p> <p>4 Certainly, and individuals, if they didn't have the</p> <p>5 proper licenses wouldn't be able to acquire drugs.</p> <p>6 But very few, if any, people bought off list price.</p> <p>7 Just, once again, it was a start of a negotiating</p> <p>8 position with customers.</p> <p>9 Q Other than being the start of a negotiating</p> <p>10 position, did you have any understanding as to what purpose</p> <p>11 a list price might have served?</p> <p>12 A Well, I mean --</p> <p>13 MS. CITERA: Object to form.</p> <p>14 THE WITNESS: -- it's part of the start of a</p> <p>15 negotiation.</p> <p>16 Q Do you know why Abbott published a catalog that</p> <p>17 listed these prices?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 THE WITNESS: To give our customers a starting point</p> <p>20 for negotiation.</p> <p>21 Q Okay.</p> <p>22 Resource file, is that a term you've ever heard?</p> <p>23 A I have no idea what that term means.</p> <p>24 Q Okay.</p> <p>25 Direct price.</p> |
| <p style="text-align: right;">Page 143</p> <p>1 customer - not sort of, it is --</p> <p>2 MS. ST. PETER-GRIFFITH: Okay.</p> <p>3 THE WITNESS: -- the start of a negotiating position</p> <p>4 with a customer.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q Would Alt Site charge list price to anybody?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 THE WITNESS: Very few, if any, people paid list</p> <p>9 price for product.</p> <p>10 Q How come?</p> <p>11 A It was very -- It was highly competitive and</p> <p>12 people, through buying groups, or -- You know, we sold</p> <p>13 mainly through contracts - buying groups or distributors or</p> <p>14 wholesalers - and they would negotiate a price and people</p> <p>15 would become members of those buying groups and have</p> <p>16 privilege to access those prices.</p> <p>17 Very few people part were part of no group, and</p> <p>18 therefore, coming up and paying list price. It was</p> <p>19 infrequent. I'm sure it happened, but just not very</p> <p>20 frequent.</p> <p>21 Q Okay.</p> <p>22 Do you understand under what circumstances it might</p> <p>23 happen?</p> <p>24 A If I wanted to -- I don't -- No, I can't -- I don't</p> <p>25 know what circumstances it might happen. Someone just -</p> | <p style="text-align: right;">Page 145</p> <p>1 A I don't know what that term means.</p> <p>2 It may have been used, I may have heard it in the</p> <p>3 past but I don't recall what it means.</p> <p>4 Q ASP.</p> <p>5 A Is Average Selling Price.</p> <p>6 Q And what is Average Selling Price?</p> <p>7 A Average Selling Price is the total units shipped</p> <p>8 out the door, divided by the total revenue received for</p> <p>9 those products - oh, excuse me - the total revenue received</p> <p>10 divided by the number of units that went out the door -</p> <p>11 pardon me, I had that backwards, didn't I?</p> <p>12 What I gave you was the Reciprocal of Average</p> <p>13 Selling Price.</p> <p>14 Q I got you.</p> <p>15 What would the purpose of an Average Selling Price</p> <p>16 be or why would Abbott be concerned or Abbott Alt Site be</p> <p>17 concerned about Average Selling Price?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 THE WITNESS: Well, directionally, it tells you many</p> <p>20 things. It's not always bad news to have an average</p> <p>21 unit selling price go down. That mean - That may mean</p> <p>22 you're getting larger customers who may pay less per</p> <p>23 unit but buy a potload of units and so the Average</p> <p>24 Selling Price will go down.</p> <p>25 It allows you, by examining that, to challenge your</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 290</p> <p>1 A (Shaking head.)</p> <p>2 Q If Abbott's customers, as part of their RFQ</p> <p>3 required Abbott Alt Site to provide information so that</p> <p>4 spread could be calculated, would there be any prohibition</p> <p>5 for the Alt Site personnel - or would there be any</p> <p>6 prohibition prohibiting the Alt Site personnel from</p> <p>7 furnishing that information?</p> <p>8 MS. CITERA: Objection.</p> <p>9 THE WITNESS: Would there be any prohibition?</p> <p>10 That would rest with the general managers, and I</p> <p>11 don't know what their response would be. But I would</p> <p>12 rather not be -- I would rather not do that.</p> <p>13 Q Okay.</p> <p>14 You would rather not do that, but do you know</p> <p>15 whether your general managers would have prohibited it?</p> <p>16 A In this particular case --</p> <p>17 MS. CITERA: Objection.</p> <p>18 THE WITNESS: -- I don't know what happened to it.</p> <p>19 Q Okay.</p> <p>20 Well, would it be fair to say that if you're</p> <p>21 looking to get the contract and Gerimed is requiring the</p> <p>22 information that it's likely that the Alt Site person not</p> <p>23 provided the information?</p> <p>24 MS. CITERA: Objection.</p> <p>25 THE WITNESS: That may be; I have no way of knowing</p> | <p style="text-align: right;">Page 292</p> <p>1 personnel may have provided that information.</p> <p>2 MS. CITERA: Objection.</p> <p>3 THE WITNESS: When I see this information, it's</p> <p>4 poss- -- If all the information's been provided, it's</p> <p>5 possible.</p> <p>6 MS. ST. PETER-GRIFFITH: What time do we have?</p> <p>7 MS. CITERA: 4:25.</p> <p>8 MS. ST. PETER-GRIFFITH: You know what, why don't we</p> <p>9 stop here for the day. We've got to pack up.</p> <p>10 And then if we could get another date from you,</p> <p>11 Mr. Robertson, as to when you might be available,</p> <p>12 perhaps in early October, if everyone could check their</p> <p>13 schedules, that would be great.</p> <p>14 MR. STETLER: Yeah. I'll check.</p> <p>15 VIDEOGRAPHER: That includes the deposition.</p> <p>16 The time is 4:28 p.m.</p> <p>17 (Whereupon, at about 4:28 p.m., the deposition was</p> <p>18 adjourned.)</p> <p>19 (The Witness waived reading and signing the</p> <p>20 transcript.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 291</p> <p>1 that. I mean, I don't know that.</p> <p>2 Q Did you ever express to anyone that you would</p> <p>3 prefer that Alt Site personnel not provide information so</p> <p>4 that customers could calculate spread?</p> <p>5 MS. CITERA: Objection.</p> <p>6 THE WITNESS: Once again, spread was not something</p> <p>7 which we commonly discussed. I mean, I -- It's just not</p> <p>8 how we marketed our product.</p> <p>9 Q But if your customers were asking for the</p> <p>10 information, would you provide it to them?</p> <p>11 MS. CITERA: Objection.</p> <p>12 THE WITNESS: If they asked for information on this,</p> <p>13 I don't know. I'd prefer not to and I probably would</p> <p>14 not.</p> <p>15 It's \$3.4M - that's a lot of money, but our sales</p> <p>16 were only \$600,000; there's not a lot of downside there.</p> <p>17 Q Okay.</p> <p>18 So would it be then your opinion that Alt Site</p> <p>19 should forego bidding on the Gerimed project?</p> <p>20 MS. CITERA: Objection.</p> <p>21 THE WITNESS: I don't know. I don't know. This</p> <p>22 seems to be if they're asking to market products through</p> <p>23 spread and that was not our orientation, that was not</p> <p>24 our goal, that was not the way we wanted to do it.</p> <p>25 Q But you think it's possible that the Alt Site</p> | <p style="text-align: right;">Page 293</p> <p>1 STATE OF FLORIDA)</p> <p>2 COUNTY OF LEE)</p> <p>3</p> <p>4 I, Lisa L. Rios, Court Reporter, and Notary Public,</p> <p>5 State of Florida at Large, do certify that I was authorized</p> <p>6 to and did stenographically report the foregoing deposition</p> <p>7 of DONALD C. ROBERTSON, and that the foregoing typewritten</p> <p>8 transcript, consisting of pages 1 through 292, is a true</p> <p>9 record of the testimony given by the witness.</p> <p>10 I further certify that I am not a relative, employee,</p> <p>11 attorney or counsel of any of the parties, nor am I a</p> <p>12 relative or employee of any of the parties' attorney or</p> <p>13 counsel connected with the action, nor am I financially</p> <p>14 interested in the action.</p> <p>15</p> <p>16</p> <p>17 Dated this 19th day of September, 2007.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">_____ Lisa L. Rios Court Reporter Notary Public State of Florida at Large</p> |

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF LEE)

I, Lisa L. Rios, Court Reporter, and Notary Public,

State of Florida at Large, certify that DONALD C. ROBERTSON
appeared before me and was duly sworn.

WITNESS my hand and official seal this 19th day of
September, 2007.

Lisa L. Rios

Court Reporter

Notary Public

State of Florida at Large

EXHIBIT 66

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
 AVERAGE WHOLESAL PRICE)
 LITIGATION) MDL No. 1456
) Civil Action No. 01-12257

THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
)

United States of America,)
 ex res. Ven-A-Care of the)
 Florida Keys, Inc. v. Abbott)
 Laboratories, Inc.)
 CIVIL ACTION NO. 06-11337-PBS)
)
)

CONTINUED VIDEO DEPOSITION OF DONALD C. ROBERTSON

DATE TAKEN: Tuesday, October 9, 2007
 TIME: 9:06 a.m. to 4:58 p.m.
 BEHALF OF: The United States
 PLACE TAKEN: United States Attorney's Office
 2110 First Street,
 Fort Myers, Florida
 REPORTER: Lisa L. Rios, Court Reporter,
 and Notary Public, State of
 Florida at Large

MARTINA REPORTING SERVICES
 Courtney Building, Suite 201
 2069 First Street
 Fort Myers, Florida 33901
 (239) 334-6545
 FAX (239) 332-2913

CONFIDENTIAL

1
2 A P P E A R A N C E S (Continued)
3

4 Appearing via Telephone:

6 AMBER NESBITT, Attorney at Law,
 Wexler, Toriseva, Wallace,
 7 55 West Monroe Street, Suite 3300
 Chicago, Illinois 60603;
 8 representing MDL and the State of Arizona
 9 SHARON LAHEY, Attorney at Law,
 Goodwin, Proctor
 10 representing TAP Pharmaceutical Products, Inc.

12 Also Present:

13 Mike Sturdevant, Videographer
 14 John Lockwood, Ven-A-Care of the Florida
 15 Keys, Inc., Relator
 16
 17

18 I N D E X

19 PAGE

20
 21 Cont'd Direct Examination by Ms. St. Peter-Griffith 305
 22 Cross-Examination by Mr. Haviland 348
 23 Cross-Examination by Mr. Anderson 434
 24
 25

2
3 A P P E A R A N C E S

4 ANN ST. PETER-GRIFFITH, Attorney at Law,
 Special Attorney for the Attorney General
 5 99 N.E. 4th Street, 3rd Floor,
 Miami, Florida 33132
 6 representing the United States Attorney,
 Southern District of Florida
 7

8 DONALD E. HAVILAND, JR., Attorney at Law,
 The Haviland Law Firm, LLC,
 9 740 S. Third Street, Third Floor
 Philadelphia, Pennsylvania 19147
 10 representing the Commonwealth of Pennsylvania
 11

12 TONI-ANN CITERA, Attorney at Law,
 Jones Day,
 222 East 41st Street
 13 New York, New York 10017-6702
 representing Abbott Laboratories, Inc.

14 DAVID J. STETLER, Attorney at Law,
 Stetler & Duffy, Ltd.,
 15 11 South LaSalle Street, Suite 1200
 Chicago, Illinois 60603;
 16 representing the Witness, Donald C. Robertson
 17

18 C. JARRETT ANDERSON, Attorney at Law,
 Anderson, LLC
 19 1300 Guadalupe, Suite 103
 Austin, Texas 78701
 20 representing the Relator, Ven-A-Care of the Florida
 Keys, Inc.
 21
 22

23 ELISEO SISNEROS, Deputy Attorney General,
 State of California Department of Justice
 24 110 West A Street, #1100
 San Diego, California 92101
 25

1
2 I N D E X (Cont'd)
3 E X H I B I T S

| ROBERTSON | DESCRIPTION | PAGE |
|-----------|--|------|
| 11 | One-page Interoffice Correspondence dated June 22, 1994 from Virginia Tobiason stamped ABT212120 | 306 |
| 12 | One-page Interoffice Correspondence dated December 3, 1993 from Jeff Hamlin | 313 |
| 13 | Two-page document with first page being an Interoffice Correspondence dated December 6, 1993 from R. Emmet Horgan | 316 |
| 14 | two-page document with first page being an Interoffice Correspondence dated December 21, 1993 from Jeffrey L. Hamlin | 317 |
| 15 | 16-page Interoffice Correspondence dated March 8, 1999 from Marianne Sutcliffe | 319 |
| 16 | 30-page document with first page stamped ABT006588 | 323 |
| 17 | 33-page composite exhibit with first page dated January 26, 2000 from Michelle Scarpelli and Jim Watson | 328 |
| 18 | 45-page composite exhibit with first page dated February 20, 1997 from Jack Miller | 330 |
| 19 | | |
| 20 | 16-page document with first page dated September 25, 1997 from Lynn E. Leone | 334 |
| 21 | | |
| 22 | 21-page document with first page being a facsimile cover sheet to Chuck Santora from Lynn Leone | 338 |
| 23 | | |
| 24 | Five-page document from Jack Miller with first page dated December 8, 1997 | 340 |
| 25 | Two-page Unanimous Consent dated September 13, 2001 | 366 |

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1 MS. CITERA: Objection to form.
 2 THE WITNESS: I don't recall specifically.
 3 Did I come away with it with a sense that the list
 4 prices were significantly higher? I don't recall data.
 5 That was a long time ago.
 6 I mean, specific numbers, I don't remember that.
 7 Q Given the logic that you've just testified about
 8 that list prices should be in relation to market prices --
 9 A That's my philosophy - excuse me.
 10 Q Yes, sir; philosophy. Thank you.
 11 Given that philosophy, did you gain an
 12 understanding of why the list prices on many Abbott products
 13 were not similar or somehow related to market price?
 14 A No.
 15 MS. CITERA: Objection to form.
 16 Q Did you ask?
 17 A No.
 18 Q Why not?
 19 A I just didn't.
 20 Q Was that considered like a taboo?
 21 A No.
 22 MS. CITERA: Objection to form.
 23 THE WITNESS: Was I discouraged from asking, is that
 24 your question?
 25 MR. ANDERSON: Yes, sir.

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1 THE WITNESS: No, I was not discouraged from asking
 2 that question.
 3 Q Did you ever discourage anyone from analyzing that
 4 issue?
 5 A No.
 6 Q Now looking back in hindsight, do you think that
 7 would have been a sound business practice to analyze why the
 8 list prices on some Abbott prices were so much higher than
 9 the market prices?
 10 MS. CITERA: Objection to form.
 11 THE WITNESS: Well, there were -- I didn't have the
 12 data from all businesses. I just didn't pay any
 13 attention to it.
 14 Q Well, with respect to Alt Site --
 15 THE WITNESS: In other words, if there's a
 16 hospital -- You know, we're all out of the same catalog.
 17 If there's a reason for -- I never got into a discussion
 18 with Hospital Products to why that was, to answer your
 19 question. I just never - I never did.
 20 Q I understand your testimony about that,
 21 Mr. Robertson, I'm asking a slightly different question, and
 22 that is, now looking back, in '91, '92, '93 and so on, do
 23 you think it would have been a sound business practice to
 24 investigate why it was that some Abbott products had list
 25 prices that were three, four, five, seven, ten times higher

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1 than actual market price?
 2 MS. CITERA: Objection to form.
 3 THE WITNESS: You know, it's tough to go back in
 4 time like that.
 5 Could it have been, I suppose, but we didn't do
 6 it -- I didn't do it.
 7 Q Are you aware of -- Well, first of all, let's read
 8 the section in Exhibit 37 titled, Medicaid?
 9 A Mm-hmm.
 10 Q And this is what Michael Heggie wrote back in April
 11 of '95, quote, Medicaid: Medicaid pays for the most part
 12 from NDC numbers. Having a published list price which is
 13 high allows a provider to bill at that list price. Some
 14 providers - pardon me - some customers who are buying our
 15 vanco at a deep discount off list may ask about the price
 16 change.
 17 Did I read that correctly?
 18 A Yeah.
 19 Q Do you agree with the principle that having a high
 20 list price will allow providers to bill at those prices?
 21 A That's what Mr. Heggie says. I don't -- You know,
 22 I don't know.
 23 Once again, in the business, too, what you bill and
 24 what you get paid are two different things.
 25 Q Well, let's focus upon what you did or didn't know.

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1 Did you ever become aware that having a high
 2 published list price would allow providers to bill at higher
 3 prices --
 4 A No.
 5 Q -- when they sought reimbursement?
 6 A No.
 7 Q Never had an awareness about that.
 8 A No -- About list prices? No.
 9 Q Did you ever have an awareness that having a high
 10 published list price would, in fact, allow providers to bill
 11 at higher AWP's on those products?
 12 A I thought -- My impression, AWP and list price were
 13 two independent issues - that was my perception - but they
 14 were not connected.
 15 Q But you understood there was a formula between the
 16 two.
 17 MS. CITERA: Objection to form.
 18 Q You've already testified to that.
 19 A Yeah; that AWP was a calculation.
 20 Q From list.
 21 MS. CITERA: Objection to form.
 22 THE WITNESS: That the list was a component of the
 23 calculation.
 24 Q Yes, sir.
 25 So did you have an understanding then that the

Page 531

1 published list price would, in fact, allow providers to bill
2 at higher AWP's?

3 A I don't remember considering that issue. I may
4 have - maybe I should have. But I don't remember.

5 Q Do you agree with the statement in the first
6 paragraph under the actual prices that are set forth on
7 Exhibit 37 that reads, quote, These price changes will
8 affect reimbursement and so customers may question us. This
9 change will affect three types of payors or insurers and I
10 will outline the effect. The reimbursement effect is
11 probably why customers will bring this issue up.

12 Do you agree that customers would raise
13 reimbursement issues with Abbott?

14 MS. CITERA: Objection to form.

15 THE WITNESS: If I read this memo, the Medicaid
16 would.

17 Q Do you agree that just as a general matter
18 customers would raise reimbursement issues with Abbott
19 personnel?

20 MS. CITERA: Objection to form.

21 THE WITNESS: As I recall, we weren't asked
22 frequently about reimbursement from customers. As I
23 recall.

24 Q Would you think it appropriate if the training
25 manual for Abbott Alternate Site personnel included a

Page 532

1 requirement to ask questions about reimbursement?

2 A To ask questions --

3 MS. CITERA: Objection to form.

4 THE WITNESS: -- of whom?

5 Q Customers.

6 A I would have to have context.

7 Q Well, assume with me, sir, that the training manual
8 for Abbott Alternate Site sales personnel included a request
9 that customers be asked about reimbursement; do you think
10 that that would be an appropriate sales technique?

11 MS. CITERA: Objection to form.

12 THE WITNESS: Well, if they were asking about
13 reimbursement, I don't know why they were asking about
14 reimbursement, what their payor mix was; that may be an
15 issue, I don't know.

16 Q Are you aware of any situation where --

17 THE WITNESS: I haven't see the manual, either.

18 Q Did you ever discipline anyone or did anyone ever
19 get disciplined to your knowledge for creating a sales
20 manual that was unauthorized?

21 A Not to my knowledge.

22 MS. CITERA: Objection to form.

23 (Whereupon, Robertson Exhibit No. 38 was marked for
24 identification.)

25 Q Mr. Robertson, does Exhibit 38 look to be an e-mail

Page 533

1 thread where, basically, Jerrie Cicarele was forwarding to
2 Harry Adams the prior e-mail about the setting of new list
3 prices on vanco?

4 A It appears to be.

5 Q So it's very similar in that regard to Exhibit 36,
6 correct?

7 A That portion is; yes.

8 Q Now, you'll agree with me, also, won't you, that
9 this foreword from Jerrie Cicarele to Harry Adams is dated
10 April 27th, '95 which is one day after Michael Heggie's --

11 A Right.

12 Q -- memo, correct?

13 A Mm-hmm.

14 Q And Harry Adams was over in HPD, HPS that had
15 authority over list prices, correct?

16 MS. CITERA: Objection to form.

17 THE WITNESS: I don't know Harry's specific
18 responsibilities, but I know he worked over there.

19 Q And that was the basic business unit that had
20 authority to --

21 A Hospital Business Systems.

22 Q -- set and publish list prices --

23 A Okay.

24 Q -- correct?

25 A I don't remember that specifically. I remember

Page 534

1 that he was part of the Hospital Business Systems
2 organization or Hospital Business Sector organization.

3 Q And you knew as a general matter that that
4 organization also is the one that published list prices,
5 correct?

6 A Yes -- The division did; yeah.

7 (Whereupon, Robertson Exhibit No. 39 was marked for
8 identification.)

9 Q Mr. Robertson, if you could now review what's been
10 marked as Exhibit 39 - Robertson 39, also known as Heggie
11 No. 79?

12 A Mm-hmm.

13 Q Does this appear to be an e-mail from Gerry
14 Eichhorn to Harry Adams, Jerrie Cicarele and John Ward?

15 A (Referring.)

16 To me, it appears to be either a fax or a memo -
17 yeah; it's communication.

18 Q And John Ward's part of that communication,
19 correct?

20 A Yeah; he's an addressee.

21 Q And so is Mr. Adams, correct?

22 A He's an addressee.

23 Q And this is dated May 5th, 1995 which is several
24 days after late April, 1995, correct?

25 A This is dated May 5th.

| | |
|---|--|
| <p style="text-align: right;">Page 619</p> <p>1 him a copy so that he has them in front of him. So I'm 2 more than willing to do that. 3 MR. ANDERSON: We'll try to work on the logistics. 4 MS. CITERA: Okay. 5 MS. ST. PETER-GRIFFITH: And the United States has 6 no objection to doing it by phone, either. 7 And, you know, to the extent that we can help 8 facilitate something down here in this office, we're 9 happy to work through that as well. 10 MS. CITERA: That would be great. Thank you. 11 MR. ANDERSON: And at least I, on behalf of the 12 Relator, continue to reserve my right to further 13 questions after your questioning and supplement 14 production that directly impacts the questioning of this 15 Witness. 16 MS. ST. PETER-GRIFFITH: The United States asserts 17 the same reservation. 18 MR. SISNEROS: Same reservation for California. 19 MS. NESBITT: Same reservation for Arizona and MDL. 20 VIDEOGRAPHER: That concludes the deposition. 21 The time is 4:58 p.m. 22 (Whereupon, at about 4:58 p.m., the deposition was 23 adjourned.) 24 (The Witness waived reading and signing the 25 transcript.)</p> | <p style="text-align: right;">Page 621</p> <p>1 2 CERTIFICATE OF OATH 3 4 STATE OF FLORIDA) 5 COUNTY OF LEE) 6 I, Lisa L. Rios, Court Reporter, and Notary Public, 7 State of Florida at Large, certify that DONALD C. ROBERTSON 8 appeared before me and was duly sworn. 9 WITNESS my hand and official seal this 24th day of 10 October, 2007. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p style="text-align: right;">Lisa L. Rios Court Reporter Notary Public State of Florida at Large</p> |
| <p style="text-align: right;">Page 620</p> <p>1 STATE OF FLORIDA) 2 COUNTY OF LEE) 3 4 I, Lisa L. Rios, Court Reporter, and Notary Public, 5 State of Florida at Large, do certify that I was authorized 6 to and did stenographically report the foregoing deposition 7 of DONALD C. ROBERTSON, and that the foregoing typewritten 8 transcript, consisting of pages 1 through 616, is a true 9 record of the testimony given by the witness. 10 I further certify that I am not a relative, employee, 11 attorney or counsel of any of the parties, nor am I a 12 relative or employee of any of the parties' attorney or 13 counsel connected with the action, nor am I financially 14 interested in the action. 15 16 17 Dated this 24th day of October, 2007. 18 19 20 21 22 23 24 25</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p style="text-align: right;">Lisa L. Rios Court Reporter Notary Public State of Florida at Large</p> | |

EXHIBIT 67

Rotz, David G.

September 7, 2007

Chicago, IL

Page 1

IN THE UNITED STATES
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456
THIS DOCUMENT RELATES TO:) Civil Action No.
United States of America, Ex rel.) 01-CV-12257-PBS
Ven-a-Care of the Florida Keys,) Hon. Patti Saris
Inc., v. Abbott Laboratories,)
Inc., And Hospira, Inc.,)
CIVIL ACTION NO. 06-11337-PBS)

ORAL AND VIDEOTAPED DEPOSITION

OF DAVID G. ROTZ

September 7, 2007

Chicago, IL

(CAPTIONS CONTINUED)

Rotz, David G.

September 7, 2007

Chicago, IL

| | |
|--|---|
| <p style="text-align: right;">Page 150</p> <p>1 my cubicle, yes.</p> <p>2 Q. Do you recall how, for example, you</p> <p>3 kept your files? Did you keep them by subject or</p> <p>4 by training course or how you might have arranged</p> <p>5 your files?</p> <p>6 A. I really don't remember how they were</p> <p>7 organized.</p> <p>8 Q. Okay. During the time that both you</p> <p>9 and Ms. Burchieri were working together, did you</p> <p>10 have joint files for these materials, or did you</p> <p>11 have your separate files?</p> <p>12 A. We had separate files. We were -- we</p> <p>13 were located in different geographic locations.</p> <p>14 So yes, we had separate files. Many of the items</p> <p>15 would have been the same in both of our files.</p> <p>16 Q. Okay. And to the extent that Ms.</p> <p>17 Burchieri would have created something -- and she</p> <p>18 was in California; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Would she have sent a copy to you to</p> <p>21 keep in the alternate site offices?</p> <p>22 A. I don't remember. She may have.</p> | <p style="text-align: right;">Page 152</p> <p>1 wholesalers for products purchased from Abbott?</p> <p>2 MR. COLE: Object to the form.</p> <p>3 THE WITNESS: I -- I think it's the</p> <p>4 industry in general. I think any manufacturer of</p> <p>5 pharmaceuticals would have an average wholesale</p> <p>6 price. That's my best understanding.</p> <p>7 BY MS. FORD:</p> <p>8 Q. Do you know how AWP -- if I say AWP to</p> <p>9 mean average wholesale price, do you understand</p> <p>10 what I mean?</p> <p>11 A. Yeah, I understand the term, yes.</p> <p>12 Q. So do you know how AWP was used?</p> <p>13 A. No, I don't.</p> <p>14 MR. COLE: Object to the form.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Do you recall ever providing training</p> <p>17 to alternate site employees about AWP?</p> <p>18 MR. COLE: Object to the form.</p> <p>19 THE WITNESS: I recall that AWP would</p> <p>20 have been part of the training. Whether I</p> <p>21 provided it myself, I don't know.</p> <p>22 BY MS. FORD:</p> |
| <p style="text-align: right;">Page 151</p> <p>1 Q. Okay. Do you recall a specific</p> <p>2 importance placed on maintaining a file copy or a</p> <p>3 -- a pristine copy of the materials that were</p> <p>4 generated for training purposes?</p> <p>5 MR. COLE: Object to the form.</p> <p>6 THE WITNESS: Any of the work we did,</p> <p>7 we would have needed to maintain a copy. How it</p> <p>8 was done, I don't know.</p> <p>9 BY MS. FORD:</p> <p>10 Q. Okay. You indicated earlier this</p> <p>11 morning that you have heard of the term "average</p> <p>12 wholesale price"; is that right?</p> <p>13 A. I have heard the term, yes.</p> <p>14 Q. Okay. And what is your best</p> <p>15 understanding of what that phrase means?</p> <p>16 MR. COLE: Object to the form.</p> <p>17 THE WITNESS: Only that it would be an</p> <p>18 average price. Because the term "wholesale" is</p> <p>19 in there, I assume that it's wholesalers, the</p> <p>20 price to wholesalers for the product.</p> <p>21 BY MS. FORD:</p> <p>22 Q. And would that be the average price to</p> | <p style="text-align: right;">Page 153</p> <p>1 Q. If you didn't provide it yourself,</p> <p>2 would Ms. Burchieri have provided it?</p> <p>3 A. Ms. Burchieri, possibly somebody in</p> <p>4 contract marketing; Lynn Leone, for example.</p> <p>5 Q. Okay.</p> <p>6 A. I don't remember specifically though.</p> <p>7 Q. And if you didn't provide it yourself,</p> <p>8 and, for example, you invited someone from</p> <p>9 contract marketing to present that portion of the</p> <p>10 training, would you have been present during that</p> <p>11 portion of the training?</p> <p>12 A. Trudy or I would have been present,</p> <p>13 yes.</p> <p>14 Q. Okay. Do you recall questions ever</p> <p>15 coming up during the course of your new-hire</p> <p>16 training, for example, about AWP?</p> <p>17 A. I don't remember specific questions</p> <p>18 being asked. I -- I think it's possible that</p> <p>19 they were asked, yes.</p> <p>20 Q. Okay. Would it have been your -- would</p> <p>21 it have been your practice to attempt to respond</p> <p>22 to those questions?</p> |

39 (Pages 150 to 153)

Rotz, David G.

September 7, 2007

Chicago, IL

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1 STATE OF ILLINOIS)

) SS:

1 COUNTY OF DuPAGE)

2 I, ROBIN M. CHIMNIAK, a notary public
 3 within and for the County of DuPage and State of
 4 Illinois, do hereby certify that heretofore, to wit,
 5 on the 7th day of September, 2007, personally appeared
 6 before me DAVID ROTZ, a witness in a certain cause now
 7 pending and undetermined in the United States District
 Court.

8 I further certify that the witness was by
 9 me first duly sworn to testify the truth, the whole
 10 truth and nothing but the truth in the cause
 11 aforesaid; that the testimony then given by the said
 12 witness was reported stenographically by me in the
 13 presence of said witness and was thereafter
 14 transcribed under my personal direction, and the
 15 foregoing is a true and complete transcript of the
 16 testimony so given by the said witness as aforesaid.

17 The signature of the witness to the
 18 foregoing deposition was not waived.

19 I further certify that the taking of this
 20 deposition was pursuant to notice and that there were
 21 present at the taking of said deposition the
 22 appearances as heretofore noted.

Page 179

1 I further certify that I am not a relative
 2 or employee or attorney or counsel, nor a relative or
 3 employee of such attorney or counsel for any of the
 4 parties hereto, nor interested directly or indirectly
 5 in the outcome of this action.

6 IN TESTIMONY WHEREOF, I have hereunto set
 7 my hand and affixed my notarial seal this _____
 8 day of September, 2007.

9

10

11

12

13 _____
ROBIN M. CHIMNIAK, CSR

14 License No. 084-001999

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46 (Pages 178 to 179)

Henderson Legal Services
 202-220-4158

EXHIBIT 68

Scully, Thomas A.

May 15, 2007

Washington, DC

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x

IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris

the Florida Keys, Inc. :

v. :

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - -x Bowler

Henderson Legal Services
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

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|--|---|
| <p style="text-align: right;">Page 362</p> <p>1 be a level that was much higher than the ASP for 2 Vancomycin, correct? 3 MR. GOBENA: Objection. Form. Also going 4 to object to the previous question. I didn't get a 5 chance to get in there. Object to the form on that. 6 You can answer the question. 7 THE WITNESS: Yes. My guess would be 8 obviously it was a transition for one year to 85 9 percent of AWP for all drugs, 95 percent for clotting 10 factor and some other drugs. And I'm sure they 11 didn't go through drug by drug and look at the 12 margins. I assume there were other home health 13 infusion drugs, for which they felt the margins for 14 that one year may have been sensitively narrow, and 15 so they kept it at 95 percent. 16 I'm just guessing -- just remember, my 17 testimony for Vancomycin, the spread was pretty big 18 and there probably wasn't a whole lot of worry about 19 85 percent not being big enough to cover it, so it's 20 probably not the reason that drove the policy. 21 (Exhibit Abbott 194 was 22 marked for identification.)</p> | <p style="text-align: right;">Page 364</p> <p>1 right? 2 BY MR. DALY: 3 Q. I believe that's right. 4 (Exhibit Abbott 195 was 5 marked for identification.) 6 THE WITNESS: Good heavy one. I can take 7 care of the rest of those if you like. 8 BY MR. DALY: 9 Q. And you mentioned that, you know, this 10 might have been a one-year carveout. And Mr. Gobena 11 seems anxious to point that out. Taking a look at 12 Exhibit Abbott 195, which I've handed you, this is 13 certain amendments that went into effect with respect 14 to the MMA effective December 20, 2006. Do you see, 15 do you see that? 16 A. Yes. 17 Q. And if you would turn to page 21 of this 18 document, and subparagraphs D-1 and D-2. Do you see 19 that the carveout that we identified that was in 20 effect for 2004 remains in effect today? 21 MR. GOBENA: Object to the form. Excuse 22 me.</p> |
| <p style="text-align: right;">Page 363</p> <p>1 BY MR. DALY: 2 Q. And Mr. Scully, I've handed you what the 3 court reporter has marked as Exhibit Abbott 194, 4 which is a copy of at least portions of the MMA 5 itself. And I would ask you to turn to page 23 of 6 that document. And you had asked whether this was a 7 carveout in the legislation itself, and I just want 8 to direct you to page 23 at the bottom, subparagraphs 9 D-1 and 2. 10 A. Okay. 11 Q. And does that appear to be the legislative 12 carveout for the rule that we were just looking at? 13 A. Refreshing my memory, I had forgotten we 14 did that. Yes. 15 MR. GOBENA: While Mr. Daly is getting his 16 exhibit out, I'll note the first page, it says that 17 this piece of legislation was effective December 8, 18 2003 to December 31, 2004. 19 MR. DALY: Anything else you want to point 20 out? 21 THE WITNESS: Yes. This was a one-year 22 transition. It went to ASP plus 6 in 2004, is that</p> | <p style="text-align: right;">Page 365</p> <p>1 THE WITNESS: Yes. I wasn't aware of 2 that, so there is still -- they're still 95 percent 3 of AWP today? 4 BY MR. DALY: 5 Q. That's what the statute says, isn't it? 6 A. Yes. I wasn't aware of that. That's what 7 the statute says. 8 MR. BREEN: Just for clarification, 9 Mr. Daly, are you referring to subparagraph D little 10 I, which ends with 95 percent of the average 11 wholesale price for such drug in effect on October 1, 12 2003? 13 MR. DALY: And D-2. 14 MR. BREEN: Say again? 15 MR. DALY: And the next paragraph, D 16 Romanette i and D Romanette ii. 17 THE WITNESS: Until they froze it at the 18 date of passage, October -- they picked the -- 95 19 percent of the AWP in place in October 2003, and 20 froze it. I had forgotten that. 21 BY MR. DALY: 22 Q. And so at least for the drugs that are</p> |

92 (Pages 362 to 365)

Henderson Legal Services
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

| Page 366 | Page 368 |
|---|--|
| <p>1 subject to this carveout in the home infusion 2 setting, Congress has kept the reimbursement of those 3 drugs at 95 percent of AWP as of -- 4 A. As of October 2003. 5 Q. That's correct, isn't it? 6 A. I guess it is. That's what the statute 7 says. Another piece of sausage. I have just 8 forgotten that we did that, to be honest with you, 9 which I assume is why they don't have a dispensing 10 fee for anything but respiratory drugs, because they 11 didn't do that for respiratory drugs. 12 Q. So it would appear that Congress, at least 13 for these drugs and in that setting of home infusion, 14 has determined to continue to subsidize the provision 15 of the services by overpaying for the drugs, correct? 16 MR. GOBENA: Object to the form. The 17 legislation speaks for itself. 18 MR. BREEN: Objection to the form. 19 BY MR. DALY: 20 Q. You can go ahead. 21 A. Yes. I was surprised to see this. I 22 forgot we did it. It was certainly never discussed</p> | <p>1 to page 27. 2 A. 27? 3 Q. Yes. 4 A. Okay. 5 Q. And in your testimony in response to 6 Mr. English, you indicate that you think -- well, you 7 state, "I think there are a lot of different provider 8 areas that may have small impacts from AWP, and we 9 are certainly willing to work with the committee to 10 identify those." And then you mentioned oncology 11 as -- oncology and dialysis and hematology being sort 12 of the big three, right? 13 A. Yes. 14 Q. And then you say, "I think almost every 15 physician to some degree that administers drugs 16 probably has some beneficial cost shifting benefit 17 from AWP, I think those are the three big areas," you 18 see that language? 19 A. Yes. 20 Q. And that was a true statement, correct? 21 A. Yes. 22 Q. On page 31, I just want to get a fix for</p> |
| Page 367 | Page 369 |
| <p>1 by members. I'm sure the staff -- staff person who 2 wrote it works with me at Alston & Bird, so I'll go 3 back and ask him, but I'm sure that it's probably, 4 they froze it to freeze it, and some level of 5 cross-subsidy apparently. I'm not sure what the 6 congressional intent there was, but I think it was 7 Senator Grassley's staff that did that provision. So 8 I had totally forgotten we did it. That it was in 9 the bill. It wasn't something that was widely 10 discussed at all. 11 Q. And are you aware of whether the drugs 12 that DOJ is suing Abbott for, many of those drugs are 13 used in the home infusion context and using DME? 14 MR. GOBENA: Objection to form. 15 THE WITNESS: As of today, I'm aware of 16 it. I wasn't aware of it before. 17 BY MR. DALY: 18 Q. But as of today, you are? 19 A. Yes. Obviously looking at the drug list. 20 Q. Page 27 of Exhibit Abbott 191, which is 21 your 10-3 -- yes, your October 3 -- excuse me, 22 October 3, 2002 testimony. I just want to direct you</p> | <p>1 -- and we may have covered this in some part in the 2 sort of background section that we did at the 3 beginning, but you state at the bottom of the page, 4 "I had been working on Medicare for over 20 years and 5 there has never been any law passed more complicated 6 than this one." How far back does your work on 7 Medicare go? 8 A. In a minor way, probably 1982. But in a 9 full time way, 1989. 10 Q. And what were you doing with respect to 11 Medicare in 1982? 12 A. Not much. Occasional staff work for 13 Senator Gorton, but very, you know, minor. 14 Q. And '89 would have started your work with 15 the Bush Administration? 16 A. And OMB. Yes. 17 Q. And if you would turn to page 34. If you 18 -- actually, if you look at 33, the page before, it 19 looks like you finished up your testimony, and then 20 George Reeb, R-E-E-B, got in the hot seat. And began 21 to talk a little bit about Medicare and Medicaid. 22 And on page 34 of Mr. Reeb's testimony, he states</p> |

93 (Pages 366 to 369)

Henderson Legal Services
202-220-4158

Scully, Thomas A.

May 15, 2007

Washington, DC

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| <p style="text-align: right;">Page 438</p> <p>1 Mr. Scully's testimony. However, I would prefer, the 2 United States would prefer to do as much questioning 3 as possible tonight, and then reserve the issue of 4 his second day. 5 MR. ESCOBAR: I'd be happy to do that, 6 subject to nobody waiving their rights, including 7 Abbott. 8 MR. GOBENA: You said it repeatedly that 9 you're not waiving your -- 10 MR. ESCOBAR: I'd be happy to spend an 11 hour if that's what we have available right now. 12 MR. DALY: And just for my part, can I say 13 that if I agree to sort of pass the witness, that 14 that's not going to be used to prejudice my ability 15 to come back. 16 MR. GOBENA: Yes. I think -- yeah, we can 17 agree to that. 18 MR. ESCOBAR: What is your position on a 19 second day? You said you haven't stated it. State 20 it. 21 MR. GOBENA: We don't have one right now. 22 MR. ESCOBAR: Let's start asking</p> | <p style="text-align: right;">Page 440</p> <p>1 (Recess.) 2 THE VIDEOGRAPHER: The time is 6:33 p.m. 3 We are going back on the record, starting tape number 4 8 in the deposition of Thomas Scully in the matter of 5 In Re Pharmaceutical Industry Average Wholesale Price 6 Litigation. 7 MR. NEAL: Mr. Escobar? 8 MR. ESCOBAR: Well, we have had an 9 off-the-record discussion, and as I said earlier, I'm 10 willing to go for an hour or so. The reality is we 11 do not have a court reporter available right now. 12 The court reporter has been here since 8:30, so it's 13 about 10 hours. And as people have said before, this 14 deposition was not noticed to go beyond what would be 15 a normal working day. And in fact, we have gone 16 longer than a normal deposition day. 17 While we understand the witness's 18 position, the reality is other people here have 19 questions to ask, and there is no way to complete the 20 deposition today, even by the party that noticed it. 21 So -- 22 MR. COOK: Mr. Breen has left to go to the</p> |
| <p style="text-align: right;">Page 439</p> <p>1 questions. Let's make use of the time. 2 THE VIDEOGRAPHER: If I can recommend if 3 we are going to need another reporter, we're going to 4 need to go off the record so I can call my office. 5 MR. DALY: If you're just going for 6 another hour, do you need that? 7 THE VIDEOGRAPHER: I have to check with 8 Sue. 9 MR. DALY: And I just want to be clear, I 10 want to make sure you picked up Mr. Gobena that my 11 passing the witness would not be used to say that I 12 don't get to complete my examination. You can have 13 other arguments. 14 MR. GOBENA: You reserved your right to 15 ask him further questions. 16 MR. DALY: Thank you. I think we can go 17 off. 18 THE VIDEOGRAPHER: The time is 6:21 p.m. 19 We are going off the record, concluding tape number 7 20 in the deposition of Thomas Scully in the matter of 21 In Re Pharmaceutical Industry Average Wholesale Price 22 Litigation.</p> | <p style="text-align: right;">Page 441</p> <p>1 airport. 2 MR. ESCOBAR: Mr. Breen had to go to the 3 airport. Other counsel had planes to make. 4 THE WITNESS: Just for the record, I did 5 request to go as long as possible today, early and 6 often, said it repeatedly all day, we just took a 7 half-hour break to discuss whether we should have a 8 half-hour break. And I would be petitioning not to 9 come back for a second day. So we'll see what 10 happens, but I have no intention of coming back for a 11 second day unless the court orders me to. 12 MR. NEAL: Mr. Escobar, I think you've 13 made your position clear. Mr. Scully has made his 14 position clear. As a practical matter, we can't go 15 forward today. We understand that. Why don't we go 16 ahead and go off the record, and we'll address this 17 issue, you know, in the ensuing days. Off the 18 record. 19 THE VIDEOGRAPHER: The time is 6:34 p.m. 20 We are going off the record, this ends tape number 8 21 in the deposition of Thomas Scully in the matter of 22 In Re Pharmaceutical Industry Average Wholesale Price</p> |

111 (Pages 438 to 441)

Scully, Thomas A.

May 15, 2007

Washington, DC

Page 442

1 Litigation. This deposition consists of eight tapes.

2 Master tapes will be held by Henderson Legal

3 Services, in Washington, D.C.

4 (Whereupon, at 6:34 p.m., the taking of

5 the instant deposition ceased.)

6

7

8 _____
Signature of the Witness

9

10 SUBSCRIBED AND SWORN to before me this _____ day

11 of _____, 2007.

12

13

14 _____
NOTARY PUBLIC

15 My Commission expires: _____

16

17

18

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112 (Page 442)

Henderson Legal Services
202-220-4158

EXHIBIT 69

Sebree, Mark

CONFIDENTIAL
Philadelphia, PA

May 17, 2007

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - -

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
PRICE LITIGATION : 01-CV-12257-PBS

vs. :

THIS DOCUMENT RELATES TO : CONFIDENTIAL

U.S. ex rel. Ven-A-Care of :

The Florida Keys, Inc. :

v. Abbott Laboratories, :

Inc., No. 06-CV-11337-PBS :

And :

State of California, ex :

Rel. Ven-A-Care vs. Abbott :

Laboratories, Inc., et al :

Case No. 1:03-cv-11226-PBS :

And :

State of Texas ex rel. :

Ven-A-Care of the Florida :

Keys, Inc. vs. Abbott :

Laboratories, et al :

Henderson Legal Services
202-220-4158

Sebree, Mark

CONFIDENTIAL
Philadelphia, PA

May 17, 2007

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| <p style="text-align: right;">Page 50</p> <p>1 Q. So going back to the previous exhibit --</p> <p>2 I can't recall what the exhibit number it is for</p> <p>3 this, but there was a February 9, 1995 memorandum</p> <p>4 that we looked at?</p> <p>5 A. I have got it. It is Number Exhibit Sebree</p> <p>6 779.</p> <p>7 Q. Exhibit Sebree 779. And it says that --</p> <p>8 this is a memo from Tim Harris, and there is a</p> <p>9 proposed four percent increase on catalog prices.</p> <p>10 When you would get a proposed</p> <p>11 increase -- strike that.</p> <p>12 Do you recall getting proposed --</p> <p>13 proposals presented to you about catalog price</p> <p>14 increases for the drugs that you were responsible</p> <p>15 for when you were at HPD?</p> <p>16 A. In the position as marketing manager?</p> <p>17 Q. Yes.</p> <p>18 A. No, I don't.</p> <p>19 Q. Well, you are listed here as product</p> <p>20 manager.</p> <p>21 Wouldn't you have gotten these</p> <p>22 proposed price increases?</p> | <p style="text-align: right;">Page 52</p> <p>1 MS. CITERA: Objection to form.</p> <p>2 THE WITNESS: There were a certain</p> <p>3 percentage of these products that were purchased at</p> <p>4 list price. Usually, when -- some customers did</p> <p>5 not have a contract but would buy the product.</p> <p>6 Other customers would pay contract price as a</p> <p>7 function of a program called RxLink. And in that --</p> <p>8 in those two ways, the contract price had an impact</p> <p>9 on -- I'm sorry, the catalog price, list price, had</p> <p>10 an impact on overall profitability.</p> <p>11 BY MR. GOBENA:</p> <p>12 Q. Explain to me the RxLink price that you</p> <p>13 just referred to.</p> <p>14 A. This is a long time ago, but my memory</p> <p>15 of RxLink is that when a customer would order a</p> <p>16 competitor's product, and the wholesaler did not</p> <p>17 have that product in stock, the wholesaler, through</p> <p>18 the RxLink contract, would substitute one of the</p> <p>19 Abbott products, and they would pay list price for</p> <p>20 that product.</p> <p>21 Q. So the price that would be listed in the</p> <p>22 RxLink system would have been the list price?</p> |
| <p style="text-align: right;">Page 51</p> <p>1 MS. CITERA: Objection, form.</p> <p>2 THE WITNESS: It is possible. I</p> <p>3 just don't recall.</p> <p>4 BY MR. GOBENA:</p> <p>5 Q. So you don't recall whether or not you</p> <p>6 did any kind of analysis of the catalog prices --</p> <p>7 proposed increases to catalog prices while you were</p> <p>8 a product manager for, let's say, Vancomycin, for</p> <p>9 example?</p> <p>10 MS. CITERA: Objection to form.</p> <p>11 THE WITNESS: Not that I recall.</p> <p>12 BY MR. GOBENA:</p> <p>13 Q. You testified earlier that catalog</p> <p>14 prices was synonymous with list price.</p> <p>15 Do you recall that testimony?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Do you know how list price was used by</p> <p>18 Abbott Labs while you were the product manager?</p> <p>19 A. Yes, I do.</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 BY MR. GOBENA:</p> <p>22 Q. How was it used?</p> | <p style="text-align: right;">Page 53</p> <p>1 MS. CITERA: Objection to form.</p> <p>2 BY MR. GOBENA:</p> <p>3 Q. I'm trying to figure out --</p> <p>4 A. That's the best of my memory, yes.</p> <p>5 Q. So if there is a particular NDC, let's</p> <p>6 take Vancomycin, 6533, if you were going -- if I</p> <p>7 asked you what the list price was, you would tell</p> <p>8 me it is a certain price, and if I asked you what</p> <p>9 the RxLink price was, would it be the same price as</p> <p>10 the list price?</p> <p>11 A. My memory is that it would have either</p> <p>12 been the same price or a price very close to that,</p> <p>13 very close to list price. I can't say for sure</p> <p>14 that it was exactly the list price, but it was a</p> <p>15 significant -- it was a higher price than the</p> <p>16 general contract prices.</p> <p>17 Q. Was there any other function that -- or</p> <p>18 any other purpose for which list price was used,</p> <p>19 other than the ones that you have just mentioned to</p> <p>20 us just now?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Not that you recall, okay.</p> |

14 (Pages 50 to 53)

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Sebree, Mark

CONFIDENTIAL
Philadelphia, PA

May 17, 2007

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1 questioning and then --
 2 MR. STETLER: As long as we can
 3 comfortably finish tomorrow, that's fine with me.
 4 MR. GOBENA: We expect to.
 5 MS. CITERA: And I might need a few
 6 minutes at the end at least tomorrow.
 7 MS. MOORE: Sure.
 8 MR. GOBENA: Let's go off the record
 9 then.
 10 THE VIDEO TAPE OPERATOR: This
 11 concludes this deposition for today. We are now
 12 going off the video record. The time is 1:41.
 13
 14 _____
 15 MARK SEBREE
 16
 17 Subscribed and sworn to and before me
 18 this _____ day of _____, 20____.
 19
 20
 21 _____
 22 Notary Public

Page 163

1 C E R T I F I C A T E
 2 STATE OF NEW JERSEY :
 3 : SS
 4 COUNTY OF BURLINGTON :
 5 I, Jeanne Christian, Court
 6 Reporter-Notary Public within and for Burlington
 7 County, Commonwealth of New Jersey, do hereby
 8 certify that the foregoing testimony of Mark
 9 Sebree was taken before me at 1622 Locust
 10 Street, Philadelphia, Pennsylvania on Thursday,
 11 May 17, 2007; that the foregoing testimony was
 12 taken in shorthand by myself and reduced to
 13 typing under my direction and control, that the
 14 foregoing pages contain a true and correct
 15 transcription of all of the testimony of said
 16 witness.
 17
 18 JEANNE CHRISTIAN
 19 Notary Public
 20
 21 My Commission expires
 22 May 21, 2007

42 (Pages 162 to 163)

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EXHIBIT 70

1 MICHAEL SELLERS - CONFIDENTIAL
2 IN THE CIRCUIT COURT OF KANAWHA COUNTY
WEST VIRGINIA

3
4 STATE OF WEST VIRGINIA, ex rel.,)
DARRELL V. MC GRAW, JR.,)
5 Attorney General.)
)
6 Plaintiff,)
)
7 vs.) Civil No.
01-C-3011
)

8 WARRICK PHARMACEUTICALS)
CORPORATION, SCHERING-PLOUGH)
9 CORPORATION, DEY, INC., ABBOTT) Hon. James C.
LABORATORIES, and ABBOTT) Stucky, Judge
10 LABORATORIES, INC.,)
)
11 Defendants.)
12

13 The videotaped deposition of MICHAEL
14 SELLERS, called by the Plaintiff for examination,
15 taken pursuant to the provisions of the West
16 Virginia Rules of Civil Procedure pertaining to
17 the taking of depositions, taken before TAMARA M.
18 SEFRANEK, a Notary Public within and for the
19 County of DuPage, State of Illinois, and a
20 Certified Shorthand Reporter of said state, at the
21 Jones, Day Law Firm, 77 West Wacker Drive,
22 Suite 3500, Chicago, Illinois, on the 28th day of
23 October, A.D. 2004, at 9:37 a.m.

24
25

Page 42

1 MICHAEL SELLERS - CONFIDENTIAL
 2 Q Did Abbott advise -- I'm sorry. Were
 3 you finished?
 4 A Yes, I'm done.
 5 Q Did Abbott advise its clients as to the
 6 reimbursement methodologies used by various
 7 insurers or State Medicaid programs?
 8 A We -- we developed with the client the
 9 information with regard to the reimbursement
 10 mechanisms.
 11 Q Is reimbursement important to Abbott's
 12 customers?
 13 MR. COOK: Objection, vague.
 14 THE WITNESS: You know, I can't speak
 15 for Abbott's customers, but --
 16 BY MR. LANDAU:
 17 Q There was sufficient demand for the
 18 service, though?
 19 MR. COOK: Objection, vague.
 20 THE WITNESS: Reimbursement services
 21 weren't something that we -- that we marketed as a
 22 separate entity. It was all part of this overall.
 23 So it wasn't that we were -- we were
 24 contracting ourselves out as a billing agent for
 25 any comer.

Page 43

1 MICHAEL SELLERS - CONFIDENTIAL
 2 BY MR. LANDAU:
 3 Q They would need to be an Abbott customer
 4 otherwise?
 5 A It would have to be within this -- that
 6 business model, yeah.
 7 Q What's the responsibility of a pharmacy
 8 manager as on this chart?
 9 A Home infusion services, as I said,
 10 offered a variety of services across a full
 11 continuum and, you know, one of them was billing
 12 and collection; the other was running a home care
 13 pharmacy.
 14 So that's what our pharmacy managers did
 15 was they ran regional pharmacies that prepared and
 16 dispensed medications to specific prescriptions
 17 for home care.
 18 Q Who were the -- to whom were those
 19 products being dispensed by the pharmacy managers?
 20 A They would actually be dispensed in the
 21 name of specific patients.
 22 Q To a particular entity or to the patient
 23 directly?
 24 A Most of the time it was delivered to
 25 whoever was delivering the service to the patient

Page 44

1 MICHAEL SELLERS - CONFIDENTIAL
 2 home.
 3 Q You mentioned earlier that prior to May
 4 2004 you were employed by Abbott Laboratories,
 5 Incorporated, correct?
 6 A Yes.
 7 Q Is that a separate entity from Abbott
 8 Laboratories?
 9 A No.
 10 Q Is there a reason that sometimes the
 11 name appears Abbott Laboratories and sometimes
 12 Abbott Laboratories, Incorporated?
 13 MR. COOK: Brent, just to clarify what
 14 Mr. Sellers -- Abbott Laboratories, Inc., is a
 15 separate corporation, is a separate entity. I
 16 don't want Mr. Sellers' lack of corporate legal
 17 knowledge to make the record unclear.
 18 Abbott Labs and Abbott Labs, Inc., are
 19 two separate corporations and separate defendants
 20 and entities.
 21 BY MR. LANDAU:
 22 Q Are you familiar with the corporate
 23 relationship between Abbott Laboratories and
 24 Abbott Laboratories, Inc.?
 25 A To some extent.

Page 45

1 MICHAEL SELLERS - CONFIDENTIAL
 2 Q Can you give me your understanding of
 3 that.
 4 A My understanding is that Abbott
 5 Laboratories, Inc., is the marketing and sales --
 6 domestic marketing and sales arm of Abbott
 7 Laboratories, and so that Abbott Laboratories owns
 8 Abbott laboratories, Inc., in its entirety.
 9 Q Prior to May 2004 was the Hospital
 10 Products Division part of Abbott Laboratories,
 11 Inc., or Abbott Laboratories?
 12 A Actually, the Hospital Products Division
 13 is not -- it's part of both.
 14 Q Can you explain how that works.
 15 A Again, Abbott Laboratories, Inc.,
 16 encompasses marketing and sales.
 17 MR. COOK: Brent, I don't know that
 18 Mr. Sellers is prepared to testify about the
 19 corporate structure. He's not a lawyer. He works
 20 in the business.
 21 I'm hesitant to have Mr. Sellers testify
 22 about something as to which I, as a litigator,
 23 might not be qualified to testify about and have
 24 him get it wrong just out of not knowing it.
 25 THE WITNESS: Yeah.

12 (Pages 42 to 45)

EXHIBIT 71

Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - -

In Re: PHARMACEUTICAL : MDL DOCKET NO.
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
PRICE LITIGATION : #01CV12257-PBS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

The deposition of MICHAEL W. SELLERS, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before LAURA R. RENKE, Certified Shorthand Reporter of the State of Illinois, at 77 West Wacker Drive, 6th Floor, Chicago, Illinois, on Tuesday, December 20, 2005, at 9:35 a.m.

Henderson Legal Services
(202) 220-4158

Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

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| <p style="text-align: right;">Page 30</p> <p>1 Q. And who were Abbott's primary competitors 2 for Liposyn? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: Baxter, and at one time I 5 believe Fresenius, which is a Swedish -- I think a 6 Swedish company. 7 BY MS. CONNOLLY: 8 Q. Do you know approximately when Fresenius 9 had a product on the market? 10 A. It was -- it was in the late '70s or early 11 '80s. 12 Q. And who was the target market for Liposyn? 13 MS. TABACCHI: Objection. Beyond the 14 scope. 15 THE WITNESS: We sold it to hospitals and 16 to home care companies. 17 BY MS. CONNOLLY: 18 Q. So again, alternate site did have some role 19 in selling Liposyn, correct? 20 A. Yes. 21 Q. Going back to Aminosyn, about what 22 percentage of the sales would have been home health</p> | <p style="text-align: right;">Page 32</p> <p>1 the scope of the notice. 2 THE WITNESS: No. But... 3 BY MS. CONNOLLY: 4 Q. And to what types of customers was that 5 version of erythromycin sold? 6 MS. TABACCHI: Same objections. 7 THE WITNESS: Primarily hospitals. 8 BY MS. CONNOLLY: 9 Q. Is there any alternate site use for that 10 drug? 11 MS. TABACCHI: Same objections. 12 THE WITNESS: To my knowledge, very -- 13 very, very small. 14 BY MS. CONNOLLY: 15 Q. So there was some alternate site use; it 16 was just minuscule? 17 MS. TABACCHI: Object to the form. Beyond 18 the scope of the notice. 19 THE WITNESS: I don't know for sure. I'm 20 just saying that it wasn't -- it wasn't a -- it 21 wasn't of a primary concern to alt site. 22 BY MS. CONNOLLY:</p> |
| <p style="text-align: right;">Page 31</p> <p>1 care as opposed to hospitals? 2 MS. TABACCHI: Objection. Beyond the scope 3 of the notice. Calls for speculation. Object to the 4 form. 5 THE WITNESS: I don't -- I don't have any - 6 - any data that's current on that. 7 BY MS. CONNOLLY: 8 Q. Is the same thing true for Liposyn? You 9 don't know? 10 A. Yes. 11 MS. TABACCHI: Same objection. 12 BY MS. CONNOLLY: 13 Q. So other than Aminosyn and Liposyn that we 14 just went through, the remainder of the drugs below 15 that solid line are PPD drugs. Is that correct? 16 A. Yeah, except for one we had a -- an IV 17 version of erythromycin. Had very small sales and 18 very small piece of the erythromycin market. The 19 oral erythromycin was a PPD drug. 20 Q. So when you say it was very small sales, do 21 you -- can you quantify that for me? 22 MS. TABACCHI: Object to the form. Beyond</p> | <p style="text-align: right;">Page 33</p> <p>1 Q. Okay. So let's go to the drugs that are 2 above the solid line. 3 A. Okay. 4 Q. First of all, can you confirm for me that 5 all of those drugs were marketed or sold by HPD? 6 A. Yes, at some time during the period. 7 Q. Sometime from 1991 to 2004? 8 A. Yes. 9 Q. Let's start with the first one. Again, I'm 10 going to butcher these names, which at least will be 11 a source of humor. Acetylcyst? Is that how it's 12 pronounced? 13 A. It's actually acetylcysteine. You're 14 missing some letters on the end of it. 15 Q. Acetylcysteine. How long did HPD market or 16 sell acetylcysteine? 17 MS. TABACCHI: Objection. Beyond the 18 scope. 19 THE WITNESS: Since before 1981. 20 BY MS. CONNOLLY: 21 Q. Why did you pick out 1981 as your marker? 22 MS. TABACCHI: Same objection.</p> |

9 (Pages 30 to 33)

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Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

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| <p style="text-align: right;">Page 70</p> <p>1 leave the company?</p> <p>2 A. I -- sometime in '01 or '02. I'm not sure.</p> <p>3 Q. After Mr. Glover left and that position was</p> <p>4 no longer filled, who was responsible for the field</p> <p>5 sales force?</p> <p>6 MS. TABACCHI: Same objections.</p> <p>7 THE WITNESS: They all reported to the</p> <p>8 general manager directly.</p> <p>9 BY MS. CONNOLLY:</p> <p>10 Q. Are you aware of any reasons other than Mr.</p> <p>11 Glover's departure that that position was eliminated?</p> <p>12 MS. TABACCHI: Same objections.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. CONNOLLY:</p> <p>15 Q. If you can turn to the next page, which is</p> <p>16 071265. Down on left side, there is a director of</p> <p>17 sales support services. Mr. Hamlin is underneath.</p> <p>18 Do you see that?</p> <p>19 A. Mm-hmm. Mm-hmm.</p> <p>20 Q. What was that position for?</p> <p>21 MS. TABACCHI: Same objections.</p> <p>22 THE WITNESS: That was the position that I</p> | <p style="text-align: right;">Page 72</p> <p>1 MS. TABACCHI: Same objections.</p> <p>2 THE WITNESS: Alternate site did not start</p> <p>3 reporting to Pete Karas's position until the</p> <p>4 retirement of Don Robertson, who was the VP/general</p> <p>5 manager of alt site.</p> <p>6 BY MS. CONNOLLY:</p> <p>7 Q. And when did Mr. Robertson retire?</p> <p>8 A. I want to say 2001.</p> <p>9 Q. Was there any reason other than Mr.</p> <p>10 Robertson's retirement that alternate site was moved</p> <p>11 beneath Mr. Karas's position rather than staying</p> <p>12 beneath the position that Mr. Robertson held?</p> <p>13 MS. TABACCHI: Same objections.</p> <p>14 THE WITNESS: I think the only reason was</p> <p>15 that we had made a decision to shut down home</p> <p>16 infusion. And so it really was a smaller business,</p> <p>17 and they felt they could consolidate it.</p> <p>18 BY MS. CONNOLLY:</p> <p>19 Q. I know you testified previously about the</p> <p>20 home infusion shutdown, that I believe you said the</p> <p>21 decision was made in about 1998 to do that.</p> <p>22 A. Mm-hmm.</p> |
| <p style="text-align: right;">Page 71</p> <p>1 talked to you about with regard to what Phil Stone</p> <p>2 had, same -- same position.</p> <p>3 BY MS. CONNOLLY:</p> <p>4 Q. The sales administration? Okay.</p> <p>5 And then beneath that is a director of ACCS</p> <p>6 sales.</p> <p>7 A. Yes.</p> <p>8 Q. What does that mean?</p> <p>9 MS. TABACCHI: Same objections.</p> <p>10 THE WITNESS: ACCS stands for Abbott</p> <p>11 critical care. It was a sales force that was</p> <p>12 targeted to the ICU and critical care situations and</p> <p>13 sold equipment for that, for that market.</p> <p>14 BY MS. CONNOLLY:</p> <p>15 Q. So that was a hospital-specific position,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And I was just curious on the next page,</p> <p>19 071266. This appears to be an outline of the sales</p> <p>20 function, but there's no -- I don't see there a</p> <p>21 position for alternate site. Do you know why that's</p> <p>22 the case on that -- this chart?</p> | <p style="text-align: right;">Page 73</p> <p>1 Q. But it was actually not fully accomplished</p> <p>2 until approximately 2001. Is that correct?</p> <p>3 MS. TABACCHI: Same objections.</p> <p>4 THE WITNESS: Correct.</p> <p>5 MS. TABACCHI: This is all beyond the scope</p> <p>6 of the notice.</p> <p>7 BY MS. CONNOLLY:</p> <p>8 Q. The one question I had was whether -- was</p> <p>9 home infusion rolled into alternate site, or did it</p> <p>10 just cease to exist?</p> <p>11 MS. TABACCHI: Same objections.</p> <p>12 THE WITNESS: It ceased to exist.</p> <p>13 BY MS. CONNOLLY:</p> <p>14 Q. So then was it the case that Abbott no</p> <p>15 longer marketed the products that were once a part of</p> <p>16 home infusion after 2001?</p> <p>17 MS. TABACCHI: Same objections. Object to</p> <p>18 the form of the question.</p> <p>19 THE WITNESS: We no longer used the</p> <p>20 business model that was used in home infusion</p> <p>21 services after 2001.</p> <p>22 BY MS. CONNOLLY:</p> |

19 (Pages 70 to 73)

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Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

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|--|---|
| <p style="text-align: right;">Page 150</p> <p>1 successful in persuading them to reduce the list 2 price. 3 BY MS. CONNOLLY: 4 Q. Did Mr. Brincks solicit your assistance in 5 trying to influence them? 6 MS. TABACCHI: Same objections. 7 THE WITNESS: I don't remember. I don't 8 remember getting involved in that process. 9 BY MS. CONNOLLY: 10 Q. Do you know if anyone else other than Mr. 11 Brincks was involved in trying to convince them to 12 lower list price? 13 MS. TABACCHI: Same objections. 14 THE WITNESS: I know that he was working 15 with Virginia Tobiason at the time. But he was the 16 main contact. 17 BY MS. CONNOLLY: 18 Q. Do you recall by what percentage Mr. 19 Brincks eventually convinced Mr. Sebree and Mr. 20 Eichhorn to lower list price? 21 MS. TABACCHI: Same objections. 22 THE WITNESS: No, I don't.</p> | <p style="text-align: right;">Page 152</p> <p>1 Sebree and Mr. Eichhorn were willing to change list 2 price in this particular circumstance? 3 MS. TABACCHI: Object to the form of the 4 question. It's beyond the scope of the notice and 5 calls for speculation. 6 THE WITNESS: No. 7 BY MS. CONNOLLY: 8 Q. After Abbott lowered its list price, was it 9 your understanding that these payers were willing to 10 use Abbott's vancomycin again? 11 MS. TABACCHI: Same objections. Beyond the 12 scope of the notice. Object to the form. 13 THE WITNESS: I don't have any personal 14 knowledge of us going back to those payers. I think 15 we were -- we were satisfied that it would help. 16 BY MS. CONNOLLY: 17 Q. To your knowledge, did you receive any 18 subsequent complaints from your customers about the 19 list prices for vancomycin after the list price for 20 vancomycin was lowered? 21 MS. TABACCHI: Same objections. 22 THE WITNESS: We didn't receive any</p> |
| <p style="text-align: right;">Page 151</p> <p>1 BY MS. CONNOLLY: 2 Q. Do you recall how quickly Abbott was able 3 to effectuate those changes in list prices for 4 vancomycin? 5 MS. TABACCHI: Same objections. 6 THE WITNESS: Not quick enough. I know 7 that it took weeks, if not months, to -- to come to 8 that decision. 9 BY MS. CONNOLLY: 10 Q. And I take it that this decision to change 11 list price and the ultimate changes to list price 12 occurred outside the normal list-price-setting 13 process that you testified about previously. 14 MS. TABACCHI: Same objections. 15 THE WITNESS: That's the way I remember it, 16 yes. 17 BY MS. CONNOLLY: 18 Q. Was that unusual that list price was 19 changed outside of the normal list price evaluation 20 process that you've testified about previously? 21 A. Highly unusual. 22 Q. Do you have any understanding as to why Mr.</p> | <p style="text-align: right;">Page 153</p> <p>1 complaints from our home infusion services customers, 2 no. 3 BY MS. CONNOLLY: 4 Q. What is your understanding of the meaning 5 of AWP? 6 MS. TABACCHI: Object to the form of the 7 question. Beyond the scope of the notice. 8 THE WITNESS: My understanding is AWP 9 stands for average wholesale price. And it is a -- 10 it is a price that is somehow established by the 11 independent agencies that handle data with regard to 12 pharmaceuticals: Red Book, Blue Book, Medi-Span. 13 BY MS. CONNOLLY: 14 Q. Do you have a more specific understanding 15 of how they set AWP? 16 MS. TABACCHI: Same objections. It's 17 beyond the scope of the notice. 18 THE WITNESS: I do now. I became aware of 19 what their specific formula was in 2001. 20 BY MS. CONNOLLY: 21 Q. Is that in connection with one of the 22 attorneys general investigations?</p> |

39 (Pages 150 to 153)

Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

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|---|--|
| <p style="text-align: right;">Page 154</p> <p>1 MS. TABACCHI: Object to the form of the 2 question. Beyond the scope of the notice. And I also 3 caution the witness not to reveal any attorney-client 4 communications. 5 THE WITNESS: No. It actually had to do 6 with a notice that was sent to us by First DataBank 7 that stated that they were changing the way that they 8 were calculating AWP based on market surveys. 9 BY MS. CONNOLLY: 10 Q. What was your understanding of the nature 11 of those surveys? 12 MS. TABACCHI: Object -- 13 THE WITNESS: I don't have any 14 understanding with regard to those surveys. That was 15 as specific as the letter was. 16 BY MS. CONNOLLY: 17 Q. So prior to receiving that letter in about 18 2001, did you have any understanding of how the 19 publishing companies set AWP? 20 MS. TABACCHI: Object to the form of the 21 question. Beyond the scope of the notice. 22 THE WITNESS: I had inferred based on some</p> | <p style="text-align: right;">Page 156</p> <p>1 MS. TABACCHI: Object to the form. 2 Mischaracterizes the witness's testimony. It's also 3 beyond the scope of the notice. 4 THE WITNESS: I -- I personally may have. 5 BY MS. CONNOLLY: 6 Q. Does Abbott have any documents that define 7 what AWP is? 8 MS. TABACCHI: Object to the form. Beyond 9 the scope of the notice. 10 THE WITNESS: To my knowledge, there are no 11 official documents that have anything to do with AWP. 12 Whether someone did it on their own or not, I 13 wouldn't have any way of knowing that. 14 BY MS. CONNOLLY: 15 Q. Do you know if sales representatives are 16 given any sort of instruction about what they're 17 supposed to tell their customers about AWP? 18 MS. TABACCHI: Same objections. 19 THE WITNESS: The instruction was that -- 20 to the sales force was that we're not supposed to 21 talk about reimbursement nor AWP. 22 BY MS. CONNOLLY:</p> |
| <p style="text-align: right;">Page 155</p> <p>1 history -- and I'm not sure exactly when. But I had 2 inferred that there was a relationship between list 3 price and AWP. 4 BY MS. CONNOLLY: 5 Q. How had you made that inference? 6 MS. TABACCHI: Same objections. 7 THE WITNESS: Basically you see the change 8 in list price, and there would be a subsequent change 9 in AWP the next reporting period from the agencies. 10 BY MS. CONNOLLY: 11 Q. And approximately when in your career at 12 Abbott were you able to make that inference? 13 MS. TABACCHI: Same objections. 14 THE WITNESS: It was somewhere between '92 15 and 2000. 16 (Brief interruption.) 17 BY MS. CONNOLLY: 18 Q. So based on when you acquired the knowledge 19 of the relationship between list price and AWP, you 20 had an understanding at the time the vancomycin issue 21 occurred that by lowering your list price, it would 22 be lowering AWP. Is that correct?</p> | <p style="text-align: right;">Page 157</p> <p>1 Q. And that was pursuant to Mr. Baker's verbal 2 instruction, right? 3 A. Right. 4 MS. TABACCHI: Same objections. 5 BY MS. CONNOLLY: 6 Q. Prior to that time, were there any 7 instructions to the sales force about speaking to 8 customers about AWP? 9 MS. TABACCHI: Same objections. 10 THE WITNESS: The general practice was that 11 we weren't supposed to talk about AWP since we didn't 12 set AWP -- it wasn't an Abbott number -- that any 13 questions we -- we would refer them to Red Book, Blue 14 Book, whomever. 15 BY MS. CONNOLLY: 16 Q. So I understand that it's your testimony 17 that Abbott didn't set the specific formula for AWP, 18 but is it likewise your testimony that Abbott had no 19 role whatsoever in influencing AWP? 20 MS. TABACCHI: Same objections. Object to 21 the form. Beyond the scope of the notice. 22 THE WITNESS: That would -- that would be</p> |

40 (Pages 154 to 157)

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Michael W. Sellers HIGHLY CONFIDENTIAL December 20, 2005
Chicago, IL

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|---|---|
| <p style="text-align: right;">Page 158</p> <p>1 my testimony, yes. 2 BY MS. CONNOLLY: 3 Q. So regardless of your knowledge of the 4 known relationship between list price and AWP, it's 5 still your testimony that Abbott has no role in 6 controlling AWP one way or the other? 7 MS. TABACCHI: Same objections. The 8 question has been asked and answered by the witness. 9 THE WITNESS: Abbott -- Abbott controlled 10 the prices that it had, list price and WAC. What 11 effect that had once the reporting agencies did it 12 actually was different. Blue Book was different from 13 Red Book and so on. They were never exactly the same 14 anyway. So those were outside of our control and 15 could have been changed at any point in time by 16 either of those agencies. 17 BY MS. CONNOLLY: 18 Q. I understand that you mean that Red Book, 19 FDB, Medi-Span had different mechanisms for 20 calculating AWP. 21 A. They got different answers. Let me put it 22 that way. I'm not sure what their mechanism was.</p> | <p style="text-align: right;">Page 160</p> <p>1 permit its sales reps to use AWP to market its 2 products. 3 MS. TABACCHI: Can you refer us to a page, 4 please? 5 MS. CONNOLLY: Yes. Page 201, lines 8 6 through 18. 7 THE WITNESS: Okay. I'm sorry. 8 BY MS. CONNOLLY: 9 Q. And my question was, setting aside that 10 general policy that Abbott had -- 11 A. Mm-hmm. 12 Q. -- are you aware of any individual 13 circumstances where an Abbott sales representative 14 marketed the spread to one of Abbott's customers? 15 MS. TABACCHI: Object to the form. Beyond 16 the scope of the notice. 17 THE WITNESS: I'm not aware of any 18 situation where someone marketed the spread with 19 regard to Abbott. 20 BY MS. CONNOLLY: 21 Q. Is there someone who would have knowledge 22 of whether that had occurred more than you?</p> |
| <p style="text-align: right;">Page 159</p> <p>1 Q. And they had different AWP's, correct? 2 MS. TABACCHI: Object to the form. Beyond 3 the scope of the notice. 4 THE WITNESS: I remember them as being 5 different, yes. 6 BY MS. CONNOLLY: 7 Q. Are you aware of any time when Abbott 8 increased its list price and that, in turn, resulted 9 in a decrease in AWP? 10 MS. TABACCHI: Same objections. It's 11 beyond the scope of the notice. 12 THE WITNESS: It didn't monitor it enough 13 to know whether that might or might not have happened 14 during the time period. 15 BY MS. CONNOLLY: 16 Q. But you're not personally aware of any 17 circumstance when that occurred? 18 A. I'm not aware of any. 19 MS. TABACCHI: Same objections. 20 BY MS. CONNOLLY: 21 Q. You had previously testified in your West 22 Virginia deposition that it was not HPD's policy to</p> | <p style="text-align: right;">Page 161</p> <p>1 MS. TABACCHI: Same objections. 2 THE WITNESS: I don't know. 3 BY MS. CONNOLLY: 4 Q. I believe you have already testified that 5 there was -- prior to Mr. Baker's verbal notification 6 that there was no written policy prohibiting sales 7 representatives from marketing the spread. Is that 8 correct? 9 MS. TABACCHI: Same objections. Beyond the 10 scope of the notice. 11 THE WITNESS: That's correct. 12 BY MS. CONNOLLY: 13 Q. Aside from having a policy per se, was 14 there any other way, to your knowledge, that this 15 unwritten policy was communicated to Abbott's sales 16 reps? 17 MS. TABACCHI: Same objections. 18 THE WITNESS: I'm not -- I'm not aware of 19 any formal program to communicate that. 20 BY MS. CONNOLLY: 21 Q. Are you aware of that communication 22 occurring more in an informal context outside of Mr.</p> |

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Chicago, IL

Page 234

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - -

4 In Re: PHARMACEUTICAL : MDL DOCKET NO.
5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
6 PRICE LITIGATION : #01CV12257-PBS

7 -----

8 THIS DOCUMENT RELATES TO: ALL ACTIONS

9 -----

10 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

11 I hereby certify that I have read the
12 foregoing transcript of my deposition given at the
13 time and place aforesaid, and I do again subscribe
14 and make oath that the same is a true, correct, and
15 complete transcript of my deposition so given as
16 aforesaid and includes changes, if any, so made by me.

17 _____

18 MICHAEL W. SELLERS

19 SUBSCRIBED AND SWORN TO

20 before me this ____ day of _____, A.D. 200__.

21 _____

22 Notary Public

Page 235

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, LAURA R. RENKE, a Certified Shorthand Reporter within and
5 for the State of Illinois, do hereby certify:

6 That previous to the commencement of the examination of the
7 witness, the witness was duly sworn to testify the whole truth
8 concerning the matters herein;

9 That the foregoing deposition was reported stenographically by
10 me, was thereafter reduced to a printed transcript by me, and
11 constitutes a true record of the testimony given and the proceedings had;

12 That the said deposition was taken before me at the time and place
13 specified;

14 That the reading and signing by the witness of the deposition
15 transcript was agreed upon as stated herein;

16 That I am not a relative or employee or attorney or counsel, nor a
17 relative or employee of such attorney or counsel for any of the parties
18 hereto, nor interested directly or indirectly in the outcome of this action.

19 IN WITNESS WHEREOF, I do hereunto set my hand at Chicago, Illinois
20 this 25th day of December, 2005. _____

21 Certified Shorthand Reporter

22 State of Illinois - CSR License No. 084-003184

60 (Pages 234 to 235)

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EXHIBIT 72

NO. D-1-GV-04-001286

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
 ex rel.)
 VEN-A-CARE OF THE)
 FLORIDA KEYS, INC.,)
 Plaintiffs,)
)
 VS.) TRAVIS COUNTY, TEXAS
)
 ABBOTT LABORATORIES INC.,)
 ABBOTT LABORATORIES,)
 HOSPIRA, INC., and B. BRAUN)
 MEDICAL INC.,)
 Defendant(s).) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
 MICHAEL SELLERS
 Volume 1
 February 13, 2007

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL SELLERS,
 produced as a witness at the instance of the
 Plaintiff(s), and duly sworn, was taken in the
 above-styled and numbered cause on the 13th of
 February, 2007, from 9:07 a.m. to 5:10 p.m., before
 CYNTHIA VOHLKEN, CSR in and for the State of Texas,
 reported by machine shorthand, at the offices of Jones
 Day, 77 West Wacker, Suite 3500, Chicago, Illinois,
 pursuant to the Texas Rules of Civil Procedure and the
 provisions attached previously.

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|---|---|
| <p style="text-align: right;">Page 22</p> <p>1 the same?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 Q. (BY MR. WINTER) Do you understand my</p> <p>4 question?</p> <p>5 A. I think I do. I believe that the</p> <p>6 responsibilities were consistent between the three of</p> <p>7 us.</p> <p>8 Q. Okay. So whoever held that position was</p> <p>9 responsible for the field sales staff and Alternate</p> <p>10 Site Product Sales; is that true?</p> <p>11 A. Yes.</p> <p>12 Q. As well as the national account managers; is</p> <p>13 that true?</p> <p>14 A. Within Alternate Site, yes.</p> <p>15 Q. The NAMs in Alternate Site. Okay.</p> <p>16 A. Yes.</p> <p>17 Q. As well as the Alternate Site contract</p> <p>18 marketing personnel, they also reported through the</p> <p>19 director of Alternate Site Product Sales; is that also</p> <p>20 true?</p> <p>21 A. For most of that time period, yes --</p> <p>22 Q. Okay.</p> <p>23 A. -- that's true.</p> <p>24 Q. And how long were you in that position</p> <p>25 beginning in 1988?</p> | <p style="text-align: right;">Page 24</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 A. I do believe so, yes. I believe --</p> <p>3 Q. (BY MR. WINTER) Charlie Mitchell?</p> <p>4 A. I believe he succeeded me in that position.</p> <p>5 Q. And I'm not necessarily asking you whether he</p> <p>6 was your immediate successor, but at some point in</p> <p>7 time he became --</p> <p>8 A. Yes.</p> <p>9 Q. -- the director of contract marketing for</p> <p>10 HPD, true?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Well, let's talk about the</p> <p>13 relationship between contract marketing for HPD proper</p> <p>14 and contract marketing within Abbott's Alternate Site.</p> <p>15 A. Okay.</p> <p>16 Q. Are we talking about the same personnel that</p> <p>17 are performing those functions?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 Q. (BY MR. WINTER) Or are there some people</p> <p>20 that are devoted to Alt Site and some people who are</p> <p>21 in HPD contract marketing proper?</p> <p>22 A. At that time there were two separate</p> <p>23 organizations.</p> <p>24 Q. And when you say "that time," you're</p> <p>25 referring to 1990?</p> |
| <p style="text-align: right;">Page 23</p> <p>1 A. For a couple of years.</p> <p>2 Q. 1990, '91?</p> <p>3 A. About 1990.</p> <p>4 Q. Okay. And was your immediate successor</p> <p>5 Mr. Ward?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And was it in 1990 that you then moved</p> <p>8 over to become the general manager of the Home</p> <p>9 Infusion Services department?</p> <p>10 A. No.</p> <p>11 Q. What position did you take in 1990?</p> <p>12 A. In 1990 I took the position as director of</p> <p>13 contract marketing.</p> <p>14 Q. For all of HPD or just for Alternate Site?</p> <p>15 A. For the hospital side of HPD --</p> <p>16 Q. For the hospital side of HPD.</p> <p>17 A. -- not including Alternate Site.</p> <p>18 Q. Okay. Now, in the capacity as director of</p> <p>19 contract marketing, is that the senior position within</p> <p>20 the contract marketing department or is there somebody</p> <p>21 that's above you in the chain of command?</p> <p>22 MS. TABACCHI: Object to the form.</p> <p>23 A. It was the senior position at that time.</p> <p>24 Q. (BY MR. WINTER) And is that a position that</p> <p>25 was subsequently filled by Mr. Mitchell?</p> | <p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Were these -- how many personnel were</p> <p>3 in -- let me ask you this question: When you became</p> <p>4 the director of contract marketing for HPD, the</p> <p>5 hospital side is how you characterized it, how many</p> <p>6 personnel reported to you?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 A. I think within that department or around that</p> <p>9 time it was about 65 or 70 people.</p> <p>10 Q. (BY MR. WINTER) And were you all housed in a</p> <p>11 building at Abbott Park?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 A. Yes.</p> <p>14 Q. (BY MR. WINTER) Okay. And did you share</p> <p>15 space with the contract marketing personnel who were</p> <p>16 performing functions with -- for Alternate Site?</p> <p>17 MS. TABACCHI: Objection.</p> <p>18 A. No.</p> <p>19 Q. (BY MR. WINTER) Were they in -- in a</p> <p>20 different floor or a different building or where were</p> <p>21 they physically located?</p> <p>22 MS. TABACCHI: Objection.</p> <p>23 A. They were in a different building.</p> <p>24 Q. (BY MR. WINTER) Okay. And so the people who</p> <p>25 were doing contract marketing for Alternate Site, did</p> |

7 (Pages 22 to 25)

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|---|--|
| <p style="text-align: right;">Page 26</p> <p>1 they not report through you or through any of your 2 chain of command or responsibility? 3 MS. TABACCHI: Objection. 4 A. There was a -- there was nothing more than a 5 dotted -- what I'd call a dotted line relationship 6 between the two organizations. Contract marketing and 7 Alternate Site reported to the director or general 8 manager of Alternate Site Product Sales. 9 Q. (BY MR. WINTER) Who at this time in 1990, up 10 until sometime around '97 or '98, I believe, it would 11 be John Ward; is that true? 12 MS. TABACCHI: Objection. 13 A. Correct. So they organizationally reported 14 up through them. If there were any allied 15 responsibilities, there was a dotted line 16 responsibility to me. So, you know, I could ask them 17 to do things, but they -- they were still reporting 18 directly to John at the time. 19 Q. (BY MR. WINTER) Would you have to go through 20 Mr. Ward or could you go directly to the manager of 21 contract marketing who was in Alternate Site? 22 A. Either. 23 Q. Either way? 24 A. Either way. 25 Q. Okay. In 1990 who was the manager for</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. (BY MR. WINTER) Less than 10. 2 I'm going to ask you to look at what's 3 been marked as Exhibit 291. 4 MS. FUMERTON: Ray, are we skipping 5 exhibit numbers? 6 MR. WINTER: I'm just following orders 7 here. I'm going to the next one. 8 MS. MOORE: I'm sorry. I grabbed the 9 one. 10 MR. WINTER: We have a malfunction. 11 MS. MOORE: We have a malfunction. It 12 should have been 279. 13 MR. WINTER: What number? 14 MS. MOORE: I'll start with 279. 15 MR. ANDERSON: No. Just put -- put the 16 sticker on top. 17 MS. TABACCHI: This is the right 18 document -- 19 MR. WINTER: It's the right document, 20 the wrong number. We'll sort it out. 21 MR. ANDERSON: Let's just put the 22 sticker on top. 23 Q. (BY MR. WINTER) 279 is what it is now. 24 There you go. 25 A. (Witness reviewing document).</p> |
| <p style="text-align: right;">Page 27</p> <p>1 contract marketing Alternate Site? 2 A. I don't -- I don't recall who that was. 3 Q. Was it Mr. Kipperman? 4 MS. TABACCHI: Objection. 5 A. I don't think it was Steve Kipperman at that 6 time. Later in -- in John Ward's tenure it was Steve 7 Kipperman. 8 Q. (BY MR. WINTER) Do you have a sense in your 9 mind as to approximately when Mr. Kipperman became the 10 manager of Alternate Site contract marketing? 11 A. No, I don't. It -- it was early '90s. 12 Q. Early '90s. Sometime prior to 1994? 13 MS. TABACCHI: Objection. 14 A. By "early '90s" I would assume that would be 15 the case, yes. 16 Q. (BY MR. WINTER) In your mind -- 17 A. Yes. 18 Q. -- early '90s is '91 or '92? 19 A. '91, '92, '93, something like that. 20 Q. Approximately how many people worked in the 21 Alt Site contract marketing department underneath that 22 manager? 23 A. I would say less than -- 24 MS. TABACCHI: Objection. 25 A. -- 10.</p> | <p style="text-align: right;">Page 29</p> <p>1 Q. And, if you would, sir, just look up after 2 you've had a chance to -- I'm not going to ask you a 3 bunch of questions about this, so you don't need to 4 read every line, but after -- 5 A. Okay. 6 Q. -- you familiarize yourself with it, when 7 you're ready. 8 A. I'm ready. 9 Q. Great. What is it? 279. 10 MS. TABACCHI: Objection. 11 A. It is what we call our Certificate of 12 Incumbency. It basically identifies the people that 13 are delegated the responsibility or the authority to 14 sign contracts on behalf of Hospital Products 15 Division. 16 Q. (BY MR. WINTER) Is a Certificate of 17 Incumbency only used in that context as far as 18 describing persons -- only used by Abbott -- let me 19 rephrase the question. 20 Does Abbott only use a Certificate of 21 Incumbency for the purpose of delegating contract 22 signing authority? 23 MS. TABACCHI: Object to the form and to 24 the question as beyond the scope of the notice. 25 A. The -- that's what we used it for. What</p> |

8 (Pages 26 to 29)

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|---|---|
| <p style="text-align: right;">Page 46</p> <p>1 record, that your questions to the extent they are of</p> <p>2 Mr. Sellers in his corporate capacity are of</p> <p>3 Mr. Sellers in his capacity as a former employee of</p> <p>4 Abbott Hospital Products Division and not of Hospira?</p> <p>5 Because when you speak in the present tense, I think</p> <p>6 you're referring to things that are historical and</p> <p>7 it's confusing for purposes of the record.</p> <p>8 MR. WINTER: I think I understand what</p> <p>9 you're saying. I'll try and be more clear.</p> <p>10 MS. TABACCHI: Can we just agree that</p> <p>11 unless we otherwise agree --</p> <p>12 MR. WINTER: Yeah.</p> <p>13 MS. TABACCHI: -- the testimony is being</p> <p>14 given on behalf of Abbott Hospital Products Division?</p> <p>15 MR. WINTER: I need to check your</p> <p>16 responses to the -- to the notice again to confirm</p> <p>17 that that's exactly how he's designated. My sense of</p> <p>18 it was that he was -- well, that may be right. Let</p> <p>19 me -- let me just look at it.</p> <p>20 MS. TABACCHI: If you also have</p> <p>21 questions with respect to Hospira, if we could</p> <p>22 separate them --</p> <p>23 MR. WINTER: I understand.</p> <p>24 MS. TABACCHI: -- it would make it</p> <p>25 easier because from a timing perspective, when you</p> | <p style="text-align: right;">Page 48</p> <p>1 the specific promotion of the products --</p> <p>2 Q. (BY MR. WINTER) And I'm speaking --</p> <p>3 A. -- that they were responsible for.</p> <p>4 Q. Excuse me. I didn't mean to speak over you.</p> <p>5 A. That's fine.</p> <p>6 Q. I want to zero in on marketing manager in HPD</p> <p>7 Alt Site so that we're clear that's what my question</p> <p>8 is focused on. Right here on this organizational</p> <p>9 chart we are looking at -- I believe this individual's</p> <p>10 name is Karla Kreklow; is that correct?</p> <p>11 A. Well, there were marketing managers, I</p> <p>12 believe, in all three segments of Alternate Site.</p> <p>13 Q. By "all three segments" you mean Alternate</p> <p>14 Site Product Sales, Renal Care and Home Infusion</p> <p>15 Services?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Under "Alternate Site Product Sales"</p> <p>18 I'm looking at a box here underneath Mr. Krajewski</p> <p>19 that says K.K. Kreklow as a marketing manager.</p> <p>20 A. Correct.</p> <p>21 Q. And is that a woman by the name of Karla</p> <p>22 Kreklow?</p> <p>23 A. Yes, it is.</p> <p>24 Q. Okay. And then underneath her is an</p> <p>25 individual by the name of M. Novak. Is that Mike</p> |
| <p style="text-align: right;">Page 47</p> <p>1 speak in the present tense --</p> <p>2 MR. WINTER: Yeah.</p> <p>3 MS. TABACCHI: -- you are actually, I</p> <p>4 believe, asking a question of Mr. Sellers in his</p> <p>5 capacity as a Hospital Products Division employee.</p> <p>6 And so I just want to make sure that the record is</p> <p>7 clear that that's the testimony that's being given.</p> <p>8 MR. WINTER: Okay.</p> <p>9 Q. (BY MR. WINTER) I want to go back to some of</p> <p>10 these pricing terms in a few minutes, Mr. Sellers, but</p> <p>11 before we do that, I want to go back to this exhibit</p> <p>12 that we started looking at.</p> <p>13 What are the -- what -- during the 19 --</p> <p>14 middle 1990s when you were at Abbott Labs, what were</p> <p>15 the duties and responsibilities of a marketing</p> <p>16 manager?</p> <p>17 MS. TABACCHI: Object to the form of the</p> <p>18 question as beyond the scope of the notice.</p> <p>19 A. It would -- it would depend on -- on what</p> <p>20 area the marketing manager was in. But typically a</p> <p>21 marketing manager, for their specific responsibility,</p> <p>22 would be looking at putting together promotional</p> <p>23 programs, assembling whatever support materials the</p> <p>24 sales force needed in order to sell the products that</p> <p>25 we had. And -- and, basically, you know, coordinating</p> | <p style="text-align: right;">Page 49</p> <p>1 Novak?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Are both Ms. Kreklow and Mr. Novak</p> <p>4 still employees of Abbott or Hospira?</p> <p>5 A. Karla Kreklow is an employee of Abbott and</p> <p>6 Mike Novak is an employee of Hospira.</p> <p>7 Q. Okay. And would it be Abbott's ordinary</p> <p>8 course of business that a marketing manager had</p> <p>9 responsibility over a drug or a number of drugs?</p> <p>10 MS. TABACCHI: Objection as beyond the</p> <p>11 scope of the notice.</p> <p>12 A. I think within this business area, because</p> <p>13 Alternate Site Product Sales pretty much promoted</p> <p>14 almost every product that we had in the catalog, yes,</p> <p>15 they had designated that Mike would be responsible for</p> <p>16 certain products and Karla would be responsible for</p> <p>17 others.</p> <p>18 Q. (BY MR. WINTER) Were there any other</p> <p>19 marketing managers within Alternate Site Product Sales</p> <p>20 at this time besides Ms. Kreklow and Mr. Novak?</p> <p>21 MS. TABACCHI: Objection.</p> <p>22 A. Not that I recall.</p> <p>23 Q. (BY MR. WINTER) And I believe your testimony</p> <p>24 a moment ago you just told me was there were also</p> <p>25 marketing managers who worked for Ms. Mershimer, is</p> |

13 (Pages 46 to 49)

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|---|---|
| <p style="text-align: right;">Page 138</p> <p>1 Q. (BY MR. WINTER) Good afternoon, Mr. Sellers.</p> <p>2 A. Good afternoon.</p> <p>3 Q. Would you please look at Exhibit 281, which</p> <p>4 we had handed to you shortly before the break. Are</p> <p>5 you familiar, sir, with nomenclature or something</p> <p>6 known as the resource file within Abbott?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 Beyond the scope of the notice.</p> <p>9 A. Yes.</p> <p>10 Q. (BY MR. WINTER) What is the resource file?</p> <p>11 A. The resource file is a central file on our</p> <p>12 shared server, which -- where we indicate a number of</p> <p>13 things about the product, its price, its cost, any</p> <p>14 relevant price points that need to be considered.</p> <p>15 It's called the resource file because it is basically</p> <p>16 a resource for our analysts to use and so everybody is</p> <p>17 looking at the same data.</p> <p>18 Q. When you say "analysts," you mean the</p> <p>19 contracting marketing analysts?</p> <p>20 A. Yes.</p> <p>21 Q. And those would be the contract marketing</p> <p>22 analysts that -- that were within the Hospital</p> <p>23 Products Division contract marketing department?</p> <p>24 MS. TABACCHI: Object to the form.</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 140</p> <p>1 the scope.</p> <p>2 A. No. It was -- the resource file is basically</p> <p>3 a large Excel file.</p> <p>4 Q. (BY MR. WINTER) So it would stand alone and</p> <p>5 not reside in, for example, the OPS, order processing,</p> <p>6 database or in any of the other databases, to your</p> <p>7 knowledge?</p> <p>8 MS. TABACCHI: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. (BY MR. WINTER) Okay. I would like to</p> <p>11 direct your attention to the document here in -- up in</p> <p>12 the upper left-hand corner. It says, "This is the</p> <p>13 July 1995 Resource file. It includes:</p> <p>14 "1. An updated list of products and</p> <p>15 their identifiers from Jerri Cicerale,</p> <p>16 "2. Recently pulled group prices from</p> <p>17 CPBMS."</p> <p>18 And then it goes on. But did I read one</p> <p>19 and two correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Who is Jerrie Cicerale?</p> <p>22 A. Jerrie Cicerale was the database management</p> <p>23 person that we had in contract marketing. She was</p> <p>24 responsible for updating the resource file. She was</p> <p>25 also responsible for submitting prices to the pricing</p> |
| <p style="text-align: right;">Page 139</p> <p>1 Q. (BY MR. WINTER) Were -- were the contract</p> <p>2 marketing analysts within Alternate Site contract</p> <p>3 marketing also able to access the resource file?</p> <p>4 A. I believe they were.</p> <p>5 Q. You said it was on the shared system. I</p> <p>6 think you described that as a mainframe?</p> <p>7 A. Shared server.</p> <p>8 Q. Shared server. Can you describe that in any</p> <p>9 greater detail? I understand you're not the designee</p> <p>10 on computer matters, but to the best of your knowledge</p> <p>11 what was this server?</p> <p>12 MS. TABACCHI: I'm going to object as</p> <p>13 beyond the scope of the notice.</p> <p>14 A. It's -- it's just a file that -- or a -- how</p> <p>15 do I characterize it? It's a data storage mechanism</p> <p>16 that can be accessed by multiple people through their</p> <p>17 local PCs.</p> <p>18 Q. (BY MR. WINTER) Okay. Could be accessed by</p> <p>19 Abbott employees both within HPD proper and within</p> <p>20 Alternate Site from their desktop, from their PC?</p> <p>21 A. I believe they could, yes.</p> <p>22 Q. Okay. Do you know if the resource file was</p> <p>23 located within any specific database on Abbott's</p> <p>24 server?</p> <p>25 MS. TABACCHI: Objection. It's beyond</p> | <p style="text-align: right;">Page 141</p> <p>1 compendia and she was responsible to make sure that</p> <p>2 OPS had the correct prices in them.</p> <p>3 Q. "OPS" being the order processing system?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Now, looking at this particular</p> <p>6 spreadsheet, can you identify the column where the</p> <p>7 prices that were reported by Ms. Cicerale to the</p> <p>8 database -- excuse me, to the price compendia are</p> <p>9 listed?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 Q. (BY MR. WINTER) And it's a two- or</p> <p>12 three-page document, so take your time and look at the</p> <p>13 whole thing, if you would like.</p> <p>14 A. (Witness reviewing document).</p> <p>15 MS. TABACCHI: Can you please re-read</p> <p>16 the question?</p> <p>17 Q. (BY MR. WINTER) I'll ask a different one.</p> <p>18 You've had an opportunity to look at the</p> <p>19 document now, sir?</p> <p>20 A. Yeah.</p> <p>21 Q. And on this document do you find any column</p> <p>22 where the prices that Abbott reported to the price</p> <p>23 reporting compendia, such as Redbook, First DataBank,</p> <p>24 MediSpan, any column where those prices are depicted?</p> <p>25 MS. TABACCHI: Object to the form.</p> |

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| <p style="text-align: right;">Page 166</p> <p>1 Q. Let me ask you this question.</p> <p>2 A. -- for this.</p> <p>3 Q. Are you aware of any circumstances where any</p> <p>4 of Abbott's wholesaler customers who were enrolled in</p> <p>5 the RxLink program and had RxLink pricing available to</p> <p>6 them would have been billed at the \$38 WAC --</p> <p>7 MS. TABACCHI: Object --</p> <p>8 Q. (BY MR. WINTER) -- in the scenario that</p> <p>9 we've described?</p> <p>10 MS. TABACCHI: -- to the form of the</p> <p>11 question. Beyond the scope of the notice.</p> <p>12 A. I'm not aware of any actual happenings with</p> <p>13 regard to that.</p> <p>14 Q. (BY MR. WINTER) Fair enough. Thank you.</p> <p>15 Did the wholesaler customers who signed</p> <p>16 up in the RxLink program sign a contract with Abbott?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 A. Yes.</p> <p>19 Q. (BY MR. WINTER) And would those contracts be</p> <p>20 something that could be found today in Mr. Adams'</p> <p>21 department?</p> <p>22 MS. TABACCHI: Object to the form.</p> <p>23 Beyond the scope of the notice.</p> <p>24 A. Yes.</p> <p>25 Q. (BY MR. WINTER) You -- you knew and</p> | <p style="text-align: right;">Page 168</p> <p>1 A. Yes.</p> <p>2 Q. Was she -- was that exclusively her duty?</p> <p>3 Let me rephrase the question. It was a poorly drafted</p> <p>4 one.</p> <p>5 A. Please.</p> <p>6 Q. Is she the only person who had that</p> <p>7 responsibility?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And is that true for the time period</p> <p>10 1992 until Ms. Cicerale retired from Abbott?</p> <p>11 A. Yes.</p> <p>12 Q. And how did Ms. Cicerale know which prices</p> <p>13 she was to report to the price reporting compendia?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 A. Well, to begin with, she being -- before I</p> <p>16 came into -- into a position to know that, she was</p> <p>17 reporting our list prices to the compendia. I</p> <p>18 believe, according to her deposition, the addition of</p> <p>19 WAC was at the request of the compendia. So it was a</p> <p>20 matter of her giving the compendia the prices that</p> <p>21 they asked for.</p> <p>22 Q. (BY MR. WINTER) So you -- your understanding</p> <p>23 is that when Ms. Cicerale reported WAC pricing, she</p> <p>24 was doing so at the request of the price reporting</p> <p>25 committee?</p> |
| <p style="text-align: right;">Page 167</p> <p>1 understand that over time, beginning in the early</p> <p>2 1990s and lasting throughout the late 1990s into the</p> <p>3 early 2000s, at least, that Abbott would from time to</p> <p>4 time do a review and an adjustment of its RxLink WAC</p> <p>5 pricing in order to minimize its exposure on the two</p> <p>6 percent prompt pay discount?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 Q. (BY MR. WINTER) You understood that Abbott</p> <p>9 did that from time to time over the years, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And this is what was known within Abbott as</p> <p>12 the WAC optimization process, correct?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 A. I've heard it titled that, yes.</p> <p>15 Q. (BY MR. WINTER) And so if you hear WAC</p> <p>16 optimization, you understand that to be that process</p> <p>17 of reviewing Abbott's RxLink WAC pricing to ensure</p> <p>18 that it is adjusted in order to minimize Abbott's</p> <p>19 exposure on the two percent prompt pay, right?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 Beyond the scope of the notice.</p> <p>22 A. Yes.</p> <p>23 Q. (BY MR. WINTER) You mentioned that</p> <p>24 Ms. Cicerale had the responsibility to report prices</p> <p>25 to the price reporting compendia?</p> | <p style="text-align: right;">Page 169</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 A. I believe that's what she said in her</p> <p>3 deposition.</p> <p>4 Q. (BY MR. WINTER) Okay. Well, my question is,</p> <p>5 with -- setting aside the time period in the late</p> <p>6 1990s when you've testified she began to report WAC</p> <p>7 pricing -- and by the way, again, in the late 1990s,</p> <p>8 the WAC pricing that Ms. Cicerale was reporting to the</p> <p>9 compendia, you know and acknowledge, was pricing that</p> <p>10 was not generally and currently available and was not</p> <p>11 pricing at which Abbott's wholesaler customers were</p> <p>12 routinely being charged --</p> <p>13 MS. TABACCHI: Object to the form of the</p> <p>14 question.</p> <p>15 Q. (BY MR. WINTER) -- true?</p> <p>16 MS. TABACCHI: Beyond the scope of the</p> <p>17 notice.</p> <p>18 A. You and I disagree on the term "available."</p> <p>19 Q. (BY MR. WINTER) Well, let's talk about --</p> <p>20 A. So --</p> <p>21 Q. Fair enough. I appreciate your caveat.</p> <p>22 A. I think we've had --</p> <p>23 Q. Let's --</p> <p>24 A. -- plenty of --</p> <p>25 Q. Let's talk about --</p> |

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| <p>1 A. -- conversation with regard to that.</p> <p>2 Q. Sure. And let me -- let me try and be more</p> <p>3 precise.</p> <p>4 You understand and acknowledge that the</p> <p>5 WAC pricing that Ms. Cicereale reported in the late</p> <p>6 1990s is not pricing that would have routinely been</p> <p>7 invoiced to the vast majority of Abbott's wholesaler</p> <p>8 customers because those wholesaler customers had</p> <p>9 available to them the RxLink pricing, which is what</p> <p>10 they would have been routinely invoiced at --</p> <p>11 MS. TABACCHI: Same --</p> <p>12 Q. (BY MR. WINTER) -- true?</p> <p>13 MS. TABACCHI: Same objections.</p> <p>14 A. I would agree with that statement.</p> <p>15 Q. Thank you.</p> <p>16 MR. WINTER: Tell you what, why don't we</p> <p>17 take a short break and come back in a few minutes.</p> <p>18 THE VIDEOGRAPHER: Stand by. The time</p> <p>19 is 2:05 p.m. We're off the record. This is the end</p> <p>20 of Tape 3.</p> <p>21 (Recess from 2:05 to 2:19)</p> <p>22 THE VIDEOGRAPHER: Stand by. The time</p> <p>23 is 2:19 p.m. Back on the record. Beginning of Tape</p> <p>24 4.</p> <p>25 Q. (BY MR. WINTER) Mr. Sellers, setting aside</p> | <p>1 and -- and we tried our best to comply with that.</p> <p>2 Q. (BY MR. WINTER) So it is your belief, again,</p> <p>3 based upon your investigation of facts reasonably</p> <p>4 known to Abbott and based upon your experience with</p> <p>5 Abbott Laboratories, that in providing your, Abbott's,</p> <p>6 list prices, you were providing information that had</p> <p>7 specifically been requested by the compendia?</p> <p>8 MS. TABACCHI: Objection to the form.</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. (BY MR. WINTER) And you knew that the price</p> <p>11 reporting compendia, you, Abbott, knew that the price</p> <p>12 reporting compendia would apply a markup to Abbott's</p> <p>13 reported list prices to get the AWP for Abbott's</p> <p>14 products, you knew that as well, correct?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 A. We knew that the price reporting compendia</p> <p>17 published our prices, yes.</p> <p>18 MR. WINTER: Well, objection,</p> <p>19 nonresponsive.</p> <p>20 Q. (BY MR. WINTER) Let me ask you this</p> <p>21 question, sir: You just stated that you knew that the</p> <p>22 price reporting compendia published your list prices,</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. You also knew that the price reporting</p> |
| Page 171 | Page 173 |
| <p>1 for a moment the time period in the late 1990s when</p> <p>2 Ms. Cicereale began reporting WAC pricing to the price</p> <p>3 reporting compendia, will you agree with me that for</p> <p>4 the majority of the time period, 1992 forward through</p> <p>5 2001, Ms. Cicereale reported Abbott's list price to the</p> <p>6 compendia for the drugs marketed by HPD?</p> <p>7 A. That's my understanding, yes.</p> <p>8 Q. Okay. Now, my question is, although</p> <p>9 Ms. Cicereale had the responsibility and it was</p> <p>10 exclusively hers of making that report, who told her</p> <p>11 which prices to report?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 A. I'm not sure what you're -- what you're</p> <p>14 asking.</p> <p>15 Q. (BY MR. WINTER) Well, did Ms. Cicereale have</p> <p>16 the discretion to select which prices she wanted to</p> <p>17 report to the price reporting compendia?</p> <p>18 A. She reported to the price compendia the</p> <p>19 prices that they wanted to have.</p> <p>20 Q. So is it your testimony that the price</p> <p>21 reporting compendia came to Abbott Labs and said,</p> <p>22 "Dear Abbott, please give us your list prices"?</p> <p>23 MS. TABACCHI: Object to the form.</p> <p>24 A. Maybe not in that form or format, but over</p> <p>25 the years they identified what prices they wanted</p> | <p>1 compendia applied a markup to your list prices to get</p> <p>2 the AWP for Abbott products, correct?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 Beyond the scope of the notice.</p> <p>5 A. We knew that they published an AWP.</p> <p>6 Q. (BY MR. WINTER) You knew that the price</p> <p>7 reporting compendia set an AWP. That's what you just</p> <p>8 stated; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. You also knew that there was a relationship</p> <p>11 between Abbott's reported list prices and AWP.</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 Q. (BY MR. WINTER) You either knew that or you</p> <p>14 didn't.</p> <p>15 MS. TABACCHI: Well, no. It's not that</p> <p>16 simple.</p> <p>17 MR. WINTER: I think it is.</p> <p>18 Q. (BY MR. WINTER) Sir, you knew -- I mean, did</p> <p>19 you know, did Abbott know, that there was a</p> <p>20 relationship between list prices it reported and the</p> <p>21 AWP's published by the price reporting compendia for</p> <p>22 Abbott drugs?</p> <p>23 A. I can --</p> <p>24 MS. TABACCHI: Object to the form.</p> <p>25 A. I can say that we suspected that there was a</p> |

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|---|--|
| <p style="text-align: right;">Page 174</p> <p>1 relationship.</p> <p>2 Q. (BY MR. WINTER) That you suspected, but you</p> <p>3 didn't know?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 Q. (BY MR. WINTER) For the time period 1992</p> <p>6 through the end of 1999, let's narrow the time period</p> <p>7 here --</p> <p>8 A. Okay.</p> <p>9 Q. -- did you know that there was a relationship</p> <p>10 between Abbott's reported list prices and AWP?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 A. To have known would mean that we would have</p> <p>13 either been informed by them or we would have looked</p> <p>14 at every price that they put out in AWP and deducted</p> <p>15 that that was the case. I don't think either one of</p> <p>16 those are a true statement. There was some inference</p> <p>17 that there was a relationship between list price and</p> <p>18 AWP, but that was it.</p> <p>19 Q. (BY MR. WINTER) So your best testimony today</p> <p>20 is that Abbott had an inference that there was a</p> <p>21 relationship between the list prices it reported and</p> <p>22 the AWP's for those products that were published by the</p> <p>23 price reporting committee?</p> <p>24 MS. TABACCHI: Object to the form.</p> <p>25 Beyond the scope of the notice.</p> | <p style="text-align: right;">Page 176</p> <p>1 Alternate Site Product Sales and they were also sold</p> <p>2 through Renal Care and also sold through Home Infusion</p> <p>3 Services, true?</p> <p>4 MS. TABACCHI: Objection, form.</p> <p>5 A. No.</p> <p>6 Q. (BY MR. WINTER) Not true. Which part of</p> <p>7 that was not true?</p> <p>8 A. Renal Care did not sell --</p> <p>9 Q. I'm sorry?</p> <p>10 A. Renal Care did not sell the products.</p> <p>11 Q. Renal Care didn't sell products. But Home</p> <p>12 Infusion Services did?</p> <p>13 A. Home Infusion Services used products within</p> <p>14 their business model, but we did not sell products on</p> <p>15 an invoice-by-invoice basis.</p> <p>16 Q. But Abbott Alternate Site Product Sales did?</p> <p>17 A. Yes.</p> <p>18 Q. And the contract marketing analysts within</p> <p>19 Abbott's Alternate Site contract marketing department</p> <p>20 did not have a role in the setting of the list prices</p> <p>21 for the products that were sold?</p> <p>22 A. No, they did not.</p> <p>23 Q. Okay. Which current and former Abbott</p> <p>24 personnel were responsible for deciding the prices</p> <p>25 that would be reported to the price reporting</p> |
| <p style="text-align: right;">Page 175</p> <p>1 A. Abbott HPD, yes.</p> <p>2 Q. (BY MR. WINTER) Who was responsible for</p> <p>3 setting the list prices that Ms. Cicerale reported to</p> <p>4 the price reporting compendia?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 A. List prices were -- were defined pretty much</p> <p>7 in a collaborative effort between contract marketing</p> <p>8 and the individual product business unit.</p> <p>9 Q. (BY MR. WINTER) The individual product</p> <p>10 business unit?</p> <p>11 A. Right.</p> <p>12 Q. What do you mean by that?</p> <p>13 A. Each of -- or our products were broken into</p> <p>14 separate business units and the marketing managers</p> <p>15 for -- in the hospital area were within that business</p> <p>16 unit and they were responsible for their products.</p> <p>17 Q. (BY MR. WINTER) What about the marketing</p> <p>18 managers within the Alternate Site area?</p> <p>19 A. They did not participate in setting list</p> <p>20 price.</p> <p>21 Q. So it was only the list -- excuse me. Only</p> <p>22 the marketing managers that were within HPD proper</p> <p>23 that participated in the setting of list prices?</p> <p>24 A. Within the hospital business sector, yes.</p> <p>25 Q. But those same products were also sold by the</p> | <p style="text-align: right;">Page 177</p> <p>1 compendia?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 A. By the -- by the way you've stated the</p> <p>4 question, I would have to say it would be the director</p> <p>5 or general manager of contract marketing.</p> <p>6 Q. (BY MR. WINTER) And that is somebody that</p> <p>7 Ms. Cicerale would have reported to, correct?</p> <p>8 A. Up through another manager, but yes.</p> <p>9 Q. So at most times during the mid-1990s that</p> <p>10 director would have been Charlie Mitchell?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 A. I believe so.</p> <p>13 Q. (BY MR. WINTER) And who is the intermediate</p> <p>14 manager between Mr. Mitchell and Ms. Cicerale that she</p> <p>15 would have reported to?</p> <p>16 A. I think during that time there were actually</p> <p>17 two, Seth Stearns, who retired sometime during that</p> <p>18 time period, and Tom Turner, who took over for him.</p> <p>19 Q. Is it your -- is it Abbott's belief and</p> <p>20 understanding that the two gentlemen that you just</p> <p>21 mentioned, Mr. Stearns, and did you say Tom Turner?</p> <p>22 A. Turner.</p> <p>23 Q. And Mr. Turner in conjunction with</p> <p>24 Mr. Mitchell would have been responsible for making</p> <p>25 the determination that Abbott should report its list</p> |

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|---|---|
| <p style="text-align: right;">Page 178</p> <p>1 prices to the price reporting compendia?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 A. I think should that have ever been thrown up</p> <p>4 for question, yes, they would have made that decision.</p> <p>5 Q. (BY MR. WINTER) Why would it have been in</p> <p>6 their area of responsibility to make the determination</p> <p>7 which prices to report to the price reporting</p> <p>8 compendia?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 A. The responsibility of contract marketing is</p> <p>11 to maintain price, so that would -- that is a price.</p> <p>12 It is -- it -- it would fall under that</p> <p>13 responsibility.</p> <p>14 Q. (BY MR. WINTER) And why would they have</p> <p>15 selected the list price instead of any of the other</p> <p>16 pricing categories that were available in Abbott's</p> <p>17 records, such as any of the prices that were in the</p> <p>18 resource file?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 A. That's what we understood the compendia</p> <p>21 wanted.</p> <p>22 Q. (BY MR. WINTER) Abbott understood that the</p> <p>23 compendia were publishing these prices, at least in</p> <p>24 part -- strike that question.</p> <p>25 Abbott understood that the prices that</p> | <p style="text-align: right;">Page 180</p> <p>1 A. No.</p> <p>2 Q. Would you agree with me that this appears to</p> <p>3 be a letter dated December 13, 1993 from Michael</p> <p>4 Heggie to Lisa at Redbook?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 Beyond the scope of the notice.</p> <p>7 A. It appears that it is a letter that was</p> <p>8 intended for Lisa, whoever that is, at Redbook, yes.</p> <p>9 Q. (BY MR. WINTER) From Mr. Heggie?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you also testified this morning</p> <p>12 that you reviewed Mr. Heggie's testimony in order to</p> <p>13 prepare for today's deposition, correct?</p> <p>14 A. Some parts of it, yes.</p> <p>15 Q. You didn't read it -- read it in its</p> <p>16 entirety?</p> <p>17 A. No.</p> <p>18 Q. Well, let's focus in on the second -- well,</p> <p>19 it's a short letter. Let me just read it and see</p> <p>20 if -- sounds like I'm reading this correctly.</p> <p>21 Beginning with the second paragraph.</p> <p>22 "Enclosed is the information on a new</p> <p>23 Abbott product for inclusion in the 1994 Red Book. I</p> <p>24 trust this will make the January update as well."</p> <p>25 Did I read that correctly?</p> |
| <p style="text-align: right;">Page 179</p> <p>1 were published by the price reporting compendia were</p> <p>2 relied upon by third-party payers who reimbursed</p> <p>3 Abbott's customers, providers, for Abbott drugs, you</p> <p>4 understood that, didn't you?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 Beyond the scope of the notice.</p> <p>7 A. There was -- there was information available</p> <p>8 through public reports, and so on, that -- that talked</p> <p>9 about a relationship that a number of payers had using</p> <p>10 AWP.</p> <p>11 Q. (BY MR. WINTER) So Abbott knew that</p> <p>12 third-party payers reimbursed providers based upon</p> <p>13 AWPs for Abbott products that were published in the</p> <p>14 compendia --</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 Q. (BY MR. WINTER) -- true?</p> <p>17 MS. TABACCHI: Beyond the scope of the</p> <p>18 notice.</p> <p>19 A. Some of the products, yes.</p> <p>20 Q. (BY MR. WINTER) Okay. And let me show you</p> <p>21 what's been marked previously as Exhibit 68.</p> <p>22 A. (Witness reviewing document).</p> <p>23 Q. All right, sir. You ready?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Okay. Do you recognize this document?</p> | <p style="text-align: right;">Page 181</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Next paragraph.</p> <p>3 "As you told me on the phone Abbott has</p> <p>4 a policy of allowing Red Book to establish the AWP.</p> <p>5 That formula, as I understand it, is minus 5% plus</p> <p>6 25%. If my math is correct that will give us a</p> <p>7 published AWP of \$43.94."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Does this refresh your recollection that</p> <p>11 Abbott Laboratories knew of the relationship between</p> <p>12 the prices that Abbott reported as list prices and</p> <p>13 AWP?</p> <p>14 MS. TABACCHI: Object to the form of the</p> <p>15 question.</p> <p>16 A. No.</p> <p>17 Q. (BY MR. WINTER) Doesn't refresh your</p> <p>18 recollection?</p> <p>19 A. This -- this basically says that Michael</p> <p>20 Heggie might have known that.</p> <p>21 Q. Well, Michael Heggie at the time held the</p> <p>22 position of manager for reimbursement within Abbott's</p> <p>23 Alternate Site, correct?</p> <p>24 A. He was manager of reimbursement and was --</p> <p>25 had a split responsibility for Alternate Site Product</p> |

46 (Pages 178 to 181)

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| | |
|--|---|
| <p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. (BY MR. WINTER) Okay. And you knew that and</p> <p>3 Abbott knew that. You knew that by virtue of your</p> <p>4 position as the general manager of Abbott Home</p> <p>5 Infusion Services and that's also information that's</p> <p>6 reasonably available to Abbott HPD.</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 Beyond the scope of the notice.</p> <p>9 Q. (BY MR. WINTER) Don't you agree?</p> <p>10 A. No, I wouldn't agree with that because I</p> <p>11 don't -- I don't believe it was general knowledge of</p> <p>12 what the operating mode for Home Infusion Services was</p> <p>13 across HPD.</p> <p>14 Q. Well, if that knowledge was --</p> <p>15 A. I mean, it was a very small business in a --</p> <p>16 in a very big division.</p> <p>17 Q. Okay. And I appreciate that. But if that</p> <p>18 knowledge was compartmentalized to the extent that you</p> <p>19 suggest, how is it that Mr. Eichhorn, who was over in</p> <p>20 HPD contract marketing proper, had the knowledge that</p> <p>21 there was certainly a relationship between list</p> <p>22 pricing and AWP?</p> <p>23 MS. TABACCHI: Object to the form.</p> <p>24 Beyond the scope of the notice.</p> <p>25 A. Because of Dave Brincks.</p> | <p style="text-align: right;">Page 212</p> <p>1 between list prices that were reported by contract</p> <p>2 marketing and AWP. If I understood your testimony,</p> <p>3 that's what you stated.</p> <p>4 A. Yes. Right.</p> <p>5 Q. Okay. Why is that information something that</p> <p>6 would have been within the ambit of Mr. Brincks' body</p> <p>7 of knowledge?</p> <p>8 MS. TABACCHI: Same objections.</p> <p>9 A. He was -- he was the -- he was the marketing</p> <p>10 manager for Home Infusion Services. You've already</p> <p>11 said Home Infusion Services as a -- as a whole</p> <p>12 probably knew there was some relationship on some</p> <p>13 payers for some products with regard to AWP. I</p> <p>14 don't -- I don't believe in this case that Mr. Brincks</p> <p>15 actually talked about AWP, but that is, obviously, how</p> <p>16 it came across in terms of the letter from -- from</p> <p>17 Gerry Eichhorn.</p> <p>18 Q. (BY MR. WINTER) You say you don't believe</p> <p>19 Mr. Brincks talked about AWP. What are you referring</p> <p>20 to, sir?</p> <p>21 MS. TABACCHI: Same objections.</p> <p>22 A. We were -- we were looking for a change in</p> <p>23 list price, so that -- that's what Dave Brincks would</p> <p>24 have requested, a change in list price.</p> <p>25 Q. (BY MR. WINTER) So do you believe that</p> |
| <p style="text-align: right;">Page 211</p> <p>1 Q. (BY MR. WINTER) So it would be -- is it your</p> <p>2 belief that Mr. Brincks informed Mr. Eichhorn of that</p> <p>3 relationship?</p> <p>4 MS. TABACCHI: Same objections.</p> <p>5 A. Well, as you -- as you can see from this</p> <p>6 letter, it says "at the request of Dave Brincks." So,</p> <p>7 obviously, he went and asked for these price changes.</p> <p>8 Q. (BY MR. WINTER) And Dave Brincks, at that</p> <p>9 time, was somebody who worked for you?</p> <p>10 A. Yes.</p> <p>11 Q. Why is it that the relationship between</p> <p>12 Abbott's list prices that were reported by HPD</p> <p>13 contract marketing to the price reporting compendia,</p> <p>14 and AWP, which was used for reimbursement purposes, is</p> <p>15 something that Mr. Brincks would have known or cared</p> <p>16 about?</p> <p>17 MS. TABACCHI: Object to the form of the</p> <p>18 question. Beyond the scope of the notice.</p> <p>19 A. Yeah. Can you rephrase that? I'm not sure I</p> <p>20 understood what you were asking.</p> <p>21 Q. (BY MR. WINTER) Well, you suggested in</p> <p>22 response to my earlier question that Mr. Brincks is</p> <p>23 the individual who probably informed Mr. Eichhorn --</p> <p>24 MS. TABACCHI: Same objections.</p> <p>25 Q. (BY MR. WINTER) -- of the relationship</p> | <p style="text-align: right;">Page 213</p> <p>1 Mr. Brincks did not articulate for Mr. Eichhorn, for</p> <p>2 his edification, that there was relationship between</p> <p>3 list price and AWP?</p> <p>4 MS. TABACCHI: Same objections.</p> <p>5 A. I don't think that was -- that was his</p> <p>6 primary discussion with them. It might have come out,</p> <p>7 but I'm, again, talking to something that I don't have</p> <p>8 any direct knowledge on.</p> <p>9 Q. (BY MR. WINTER) Did you participate in any</p> <p>10 conversations between Mr. Brincks and Mr. Eichhorn on</p> <p>11 this issue of adjusting the list price?</p> <p>12 A. No, I did not.</p> <p>13 Q. To your knowledge, was there ever any policy</p> <p>14 or directive imparted by the managers within Alternate</p> <p>15 Site to the people that worked underneath them not to</p> <p>16 discuss AWP or reimbursement with customers?</p> <p>17 MS. TABACCHI: Object to the form of the</p> <p>18 question. Beyond the scope of the notice.</p> <p>19 A. Yes, I believe there were -- were</p> <p>20 instructions not to engage in conversation with regard</p> <p>21 to that.</p> <p>22 Q. (BY MR. WINTER) Were those instructions</p> <p>23 verbally disseminated or were they put down in</p> <p>24 writing?</p> <p>25 MS. TABACCHI: Same objections.</p> |

54 (Pages 210 to 213)

FREDERICKS-CARROLL REPORTING

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Page 294

1 NO. D-1-GV-04-001286
 2 THE STATE OF TEXAS) IN THE DISTRICT COURT
 3)
 4 ex rel.)
 5 VEN-A-CARE OF THE)
 6 FLORIDA KEYS, INC.,)
 7 Plaintiffs,)
 8)
 9 VS.) TRAVIS COUNTY, TEXAS
 10)
 11 ABBOTT LABORATORIES INC.,)
 12 ABBOTT LABORATORIES,)
 13 HOSPIRA, INC., and B. BRAUN)
 14 MEDICAL INC.,)
 15 Defendant(s).) 201ST JUDICIAL DISTRICT
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

REPORTER'S CERTIFICATION
 DEPOSITION OF MICHAEL SELLERS
 Volume I
 February 13, 2007

I, Cynthia Vohlken, Certified Shorthand Reporter
 in and for the State of Texas, hereby certify to the
 following:
 That the witness, MICHAEL SELLERS, was duly sworn
 by the officer and that the transcript of the oral
 deposition is a true record of the testimony given by
 the witness;
 That the deposition transcript was submitted on
 February 26, 2007, to the witness or to the attorney
 for the witness for examination, signature and return
 to me by March 21, 2007;
 That the amount of time used by each party at the
 deposition is as follows:

Page 295

1 Mr. Raymond Winter - 05:42
 2 That pursuant to information given to the
 3 deposition officer at the time said testimony was
 4 taken, the following includes counsel for all parties
 5 of record:
 6 MR. RAYMOND WINTER,
 7 Attorney for Plaintiff;
 8 MR. JARRETT ANDERSON,
 9 Attorney for the Relator;
 10 MS. TINA M. TABACCHI,
 11 Attorney for Defendants Abbott
 12 Laboratories, Inc. and Hospira, Inc.
 13 I further certify that I am neither counsel for,
 14 related to, nor employed by any of the parties or
 15 attorneys in the action in which this proceeding was
 16 taken, and further that I am not financially or
 17 otherwise interested in the outcome of the action.
 18 Further certification requirements pursuant to
 19 Rule 203 of TRCP will be certified to after they have
 20 occurred.
 21 Certified to by me this 26th day of February,
 22 2007.
 23)
 24)
 25)

Cynthia Vohlken, Texas CSR 1059
 Expiration Date: 12/31/2008
 Firm Registration No. 82
 Fredericks-Carroll Reporting
 7719 Wood Hollow Drive, Suite 156
 Austin, Texas 78731
 Telephone: (512) 477-9911
 (800) 234-3376
 Fax: (512) 345-1417

Page 296

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
 2 The original deposition was/was not returned to
 3 the deposition officer on , 2007;
 4 If returned, the attached Changes and Signature
 5 page contains any changes and the reasons therefor;
 6 If returned, the original deposition was delivered
 7 to Mr. Raymond Winter, Custodial Attorney;
 8 That \$ is the deposition officer's
 9 charges to the Plaintiff(s) for preparing the original
 10 deposition transcript and any copies of exhibits;
 11 That the deposition was delivered in accordance
 12 with Rule 203.3, and that a copy of this certificate
 13 was served on all parties shown herein on and filed
 14 with the Clerk.
 15 Certified to by me this day of
 16 , 2007.
 17)
 18)
 19)
 20 Cynthia Vohlken, Texas CSR 1059
 21 Expiration Date: 12/31/2008
 22 Firm Registration No. 82
 23 Fredericks-Carroll Reporting
 7719 Wood Hollow Drive, Suite 156
 Austin, Texas 78731
 Telephone: (512) 477-9911
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 Fax: (512) 345-1417
 24 JOB NO. 2150
 25)

75 (Pages 294 to 296)

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578cd796-2f41-40d6-9388-fa077af3832e

EXHIBIT 73

NO. D-1-GV-04-001286

| | | |
|-----------------------------|---|-------------------------|
| THE STATE OF TEXAS |) | IN THE DISTRICT COURT |
| |) | |
| ex rel. |) | |
| VEN-A-CARE OF THE |) | |
| FLORIDA KEYS, INC., |) | |
| Plaintiffs, |) | |
| |) | |
| VS. |) | TRAVIS COUNTY, TEXAS |
| |) | |
| ABBOTT LABORATORIES INC., |) | |
| ABBOTT LABORATORIES, |) | |
| HOSPIRA, INC., and B. BRAUN |) | |
| MEDICAL INC., |) | |
| Defendant(s). |) | 201ST JUDICIAL DISTRICT |

ORAL AND VIDEOTAPED DEPOSITION OF
 MICHAEL SELLERS
 Volume 2
 February 14, 2007

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL SELLERS,
 produced as a witness at the instance of the
 Plaintiff(s), and duly sworn, was taken in the
 above-styled and numbered cause on the 14th of
 February, 2007, from 9:06 a.m. to 4:58 p.m., before
 CYNTHIA VOHLKEN, CSR in and for the State of Texas,
 reported by machine shorthand, at the offices of Jones
 Day, 77 West Wacker, Suite 3500, Chicago, Illinois,
 pursuant to the Texas Rules of Civil Procedure and the
 provisions attached previously.

FREDERICKS-CARROLL REPORTING

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| | |
|---|---|
| <p style="text-align: right;">Page 414</p> <p>1 '98.</p> <p>2 Q. Do you recall halting the circulation of</p> <p>3 newsletters in '98 or '99?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 A. I don't remember halting the creation of</p> <p>6 newsletters.</p> <p>7 Q. (BY MR. ANDERSON) That was just when you</p> <p>8 left your position in Home Infusion?</p> <p>9 A. No. That was when we made the decision that</p> <p>10 we were going to leave the business.</p> <p>11 Q. Oh, okay. On that point just for a moment.</p> <p>12 While you decided in '98 to leave the business, isn't</p> <p>13 it true that Abbott stayed in the Home Infusion</p> <p>14 Services business until at least 2001, 2002?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 A. We decided in 1998 to extract ourselves from</p> <p>17 the business and -- but one of the decisions in doing</p> <p>18 that was that we would uphold any contractual</p> <p>19 arrangements we had with existing clients. And so</p> <p>20 there was a general phase down between 1998 and the</p> <p>21 end of 2000.</p> <p>22 Q. (BY MR. ANDERSON) And, accordingly, during</p> <p>23 that phase down, of course, Abbott continued to</p> <p>24 perform Home Infusion Services functions?</p> <p>25 MS. TABACCHI: Object to the form.</p> | <p style="text-align: right;">Page 416</p> <p>1 "managed care" from third-party reimbursement?</p> <p>2 A. No. It's just a little -- it's a little more</p> <p>3 involved, third-party reimbursement.</p> <p>4 Q. Other than in the context of managed care,</p> <p>5 did Home Infusion reimbursement services personnel at</p> <p>6 Abbott negotiate with other third-party payers</p> <p>7 regarding reimbursement off of AWP?</p> <p>8 MS. TABACCHI: Objection, form.</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. (BY MR. ANDERSON) Do you know why there was</p> <p>11 not negotiation in that context?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 A. I said I wasn't aware of it, so I can't tell</p> <p>14 you why it was or why it wasn't. I wasn't aware.</p> <p>15 Q. (BY MR. ANDERSON) You just can't testify one</p> <p>16 way or the other about it?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 Mischaracterizes the testimony.</p> <p>19 A. I told you, I wasn't aware of any</p> <p>20 negotiations done on --</p> <p>21 Q. (BY MR. ANDERSON) I know. And I'm asking --</p> <p>22 A. -- any AWP.</p> <p>23 Q. Yes, sir. And I'm asking you if you know why</p> <p>24 there weren't any negotiations done.</p> <p>25 A. Again, I can't -- I can't answer that</p> |
| <p style="text-align: right;">Page 415</p> <p>1 A. We continued to live up to our contractual</p> <p>2 obligations, yes.</p> <p>3 Q. (BY MR. ANDERSON) Now, looking at what's</p> <p>4 been marked as Exhibit 296. You see that --</p> <p>5 MR. WINTER: Seven.</p> <p>6 Q. (BY MR. ANDERSON) Seven. Pardon me. You</p> <p>7 see Paragraph 2?</p> <p>8 A. Yes.</p> <p>9 Q. And I'll read for the record. "Know your</p> <p>10 drug costs and Average Wholesale Price (AWP). This is</p> <p>11 the number one question case managers ask when</p> <p>12 negotiating pricing."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Is it true that Home Infusion Services</p> <p>16 personnel would negotiate with third-party payers on</p> <p>17 reimbursement pricing?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 A. What this is -- this is -- this is an</p> <p>20 informative note to our clients. A lot of our clients</p> <p>21 handled what I'd call prior authorization of their</p> <p>22 patients and we were just trying to make them aware of</p> <p>23 things that managed care case managers were going to</p> <p>24 focus in on in that prior authorization.</p> <p>25 Q. (BY MR. ANDERSON) Do you distinguish</p> | <p style="text-align: right;">Page 417</p> <p>1 question if I didn't know that there was any going on.</p> <p>2 Q. You know, I think we're not communicating</p> <p>3 with one another. I'm not asking you to explain why</p> <p>4 it was going on. I appreciate that you're testifying</p> <p>5 it was not happening. I'm asking you if you could</p> <p>6 explain why negotiation with third-party payers other</p> <p>7 than managed care was not occurring?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 A. I'm saying I don't have any knowledge of it.</p> <p>10 Q. (BY MR. ANDERSON) Okay. I understand. All</p> <p>11 right.</p> <p>12 Now reading from Bullet 3 immediately</p> <p>13 under. "When possible, ask the case manager what she</p> <p>14 considers to be usual and customary for the services</p> <p>15 being provided. Compare that to your usual and</p> <p>16 customary and if it is lower, ask the case manager for</p> <p>17 an additional 15 to 20 percent over her U&C."</p> <p>18 Did I read that correctly?</p> <p>19 A. Uh-huh.</p> <p>20 Q. How could -- how were Abbott personnel</p> <p>21 involved in negotiating on usual and customary</p> <p>22 charges?</p> <p>23 MS. TABACCHI: Object to the form of the</p> <p>24 question.</p> <p>25 A. I would -- I would see us -- we were</p> |

31 (Pages 414 to 417)

FREDERICKS-CARROLL REPORTING

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1 I, MICHAEL SELLERS, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.
4

5
6 MICHAEL SELLERS
7

8
9 THE STATE OF)
10 COUNTY OF)
11 Before me, , on this day
12 personally appeared MICHAEL SELLERS, known to me (or
13 proved to me under oath or through
14) (description of identity
15 card or other document) to be the person whose name is
16 subscribed to the foregoing instrument and
17 acknowledged to me that they executed the same for the
18 purposes and consideration therein expressed.
19 Given under my hand and seal of office this
20 day of , 2007.
21
22
23

24 NOTARY PUBLIC IN AND FOR
25 THE STATE OF

Page 572

1 Mr. Jarrett Anderson - 05:41
2 That pursuant to information given to the
3 deposition officer at the time said testimony was
4 taken, the following includes counsel for all parties
5 of record:

6 MR. RAYMOND WINTER,
7 Attorney for Plaintiff;
8 MR. JARRETT ANDERSON,
9 Attorney for the Relator;
10 MS. TINA M. TABACCHI,
11 Attorney for Defendants Abbott
12 Laboratories, Inc. and Hospira, Inc.

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties or
15 attorneys in the action in which this proceeding was
16 taken, and further that I am not financially or
17 otherwise interested in the outcome of the action.
18 Further certification requirements pursuant to
19 Rule 203 of TRCP will be certified to after they have
20 occurred.
21 Certified to by me this 26th day of February,
22 2007.
23

24 Cynthia Vohlken, Texas CSR 1059
25 Expiration Date: 12/31/2008
Firm Registration No. 82
Fredericks-Carroll Reporting
7719 Wood Hollow Drive, Suite 156
Austin, Texas 78731
Telephone: (512) 477-9911
(800) 234-3376
Fax: (512) 345-1417

26 JOB NO. 215

Page 571

1 NO. D-1-GV-04-001286
2 THE STATE OF TEXAS) IN THE DISTRICT COURT
3)
4 ex rel.)
5 VEN-A-CARE OF THE)
6 FLORIDA KEYS, INC.,)
7 Plaintiffs,)
8)
9 VS.) TRAVIS COUNTY, TEXAS
10)
11 ABBOTT LABORATORIES INC.,)
12 ABBOTT LABORATORIES,)
13 HOSPIRA, INC., and B. BRAUN)
14 MEDICAL INC.,)
15 Defendant(s).) 201ST JUDICIAL DISTRICT

16 REPORTER'S CERTIFICATION
17 DEPOSITION OF MICHAEL SELLERS
18 Volume 2
19 February 14, 2007

20 I, Cynthia Vohlken, Certified Shorthand Reporter
21 in and for the State of Texas, hereby certify to the
22 following:
23 That the witness, MICHAEL SELLERS, was duly sworn
24 by the officer and that the transcript of the oral
25 deposition is a true record of the testimony given by
the witness;
That the deposition transcript was submitted on
February 26, 2007, to the witness or to the attorney
for the witness for examination, signature and return
to me by March 21, 2007;
That the amount of time used by each party at the
deposition is as follows:

Page 573

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to
3 the deposition officer on , 2007;
4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;
6 If returned, the original deposition was delivered
7 to Mr. Raymond Winter, Custodial Attorney;
8 That \$ is the deposition officer's
9 charges to the Plaintiff(s) for preparing the original
10 deposition transcript and any copies of exhibits;
11 That the deposition was delivered in accordance
12 with Rule 203.3, and that a copy of this certificate
13 was served on all parties shown herein on and filed
14 with the Clerk.
15 Certified to by me this day of
16 , 2007.
17
18
19

20 Cynthia Vohlken, Texas CSR 1059
21 Expiration Date: 12/31/2008
22 Firm Registration No. 82
23 Fredericks-Carroll Reporting
24 7719 Wood Hollow Drive, Suite 156
25 Austin, Texas 78731
Telephone: (512) 477-9911
(800) 234-3376
Fax: (512) 345-1417

26 JOB NO. 2150

70 (Pages 570 to 573)

FREDERICKS-CARROLL REPORTING

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EXHIBIT 74

Sellers, Michael W. HIGHLY CONFIDENTIAL
Chicago, IL

November 1, 2007

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION,) Case No.
Plaintiffs,) 0112257-PBS
)
vs.) HIGHLY CONFIDENTIAL
)
ABBOTT LABORATORIES, INC., and)
HOSPIRA,)
Defendants.)

-----x

The oral and videotaped deposition of
MICHAEL W. SELLERS, called by the Plaintiffs for
examination, taken pursuant to the Federal Rules of
Civil Procedure of the United States District Courts
pertaining to the taking of depositions, taken before
Janice M. Kocek, CSR, a Notary Public within and for

Henderson Legal Services
202-220-4158

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Chicago, IL

November 1, 2007

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| <p style="text-align: right;">Page 66</p> <p>1 merged into the HBS Contract Marketing? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Sometime around mid-2000. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Okay. 6 A. The contract management piece of 7 Alternate Site was moved under my responsibilities 8 so that all of -- so that all of the contract 9 responsibilities for the Hospital Products Division 10 were in one organization. But when I, when I first 11 took the position it was -- they were separate. 12 Q. Did you take the position at the 13 beginning of 2000? 14 A. Yes. 15 Q. And then about six months later you got 16 the Alt. Site Contract Marketing? 17 A. As I, as I recall it was around that 18 time. 19 Q. And when was Home Infusion Services 20 phased out or shut down? 21 A. We made the business decision to cease 22 taking new clients and to not renew any, any</p> | <p style="text-align: right;">Page 68</p> <p>1 Q. Why did you recommend it? 2 A. The market had changed considerably. We 3 had originally had one profile that we had been 4 promoting and in the years prior to 1997 we were 5 seeing that we were having less success in that 6 business model and in terms of gaining new clients. 7 Our assessment of the general marketplace was that 8 we didn't believe that it was a viable business 9 longer term and so that's what led to the decision. 10 Q. Did Mr. Robertson express any interest in 11 closing the Home Infusion business earlier than 12 '97? 13 A. Not that I remember. 14 Q. Okay. And when you assumed the position 15 of general manager for Contract Marketing and Home 16 Infusion Services, did that title change after Home 17 Infusion was phased out in about 2000 or -- 18 A. 2001. 19 Q. -- 2001? 20 A. Yeah, we struck the last -- 21 Q. I'm sorry? 22 A. We struck the last few words off the end</p> |
| <p style="text-align: right;">Page 67</p> <p>1 contracts in 1997. We realized that it would 2 probably take another four or five years to fulfill 3 our contract responsibilities with our clients. 4 Q. Okay. And who made the decision in '97 5 to not take new customers for the Home Infusion 6 department or sector? 7 A. Well -- 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: It, it, it was a -- it was 10 a -- it was a consensus business decision of HPD 11 management. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Who specifically in HPD management made 14 that call? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: I can't, I can't say that 17 any one person made that call. Don Robertson, and 18 I, and I recommended it. And after some 19 consideration I -- it was, it was agreed upon. 20 21 22 BY MS. ST. PETER-GRIFFITH:</p> | <p style="text-align: right;">Page 69</p> <p>1 of it. 2 Q. Okay. And then your position then was 3 just with general manager for Contract Marketing? 4 A. Yes. 5 Q. Okay. Were there any other general 6 managers for Contract Marketing -- 7 A. No. 8 Q. -- during this time period? 9 Within the Hospital Products Division at 10 all? 11 A. No. 12 Q. And how long did you hold that position 13 as general manager for Contract Marketing? 14 A. Until April of 2004. 15 Q. And what happened in April of 2004? 16 A. We ceased to become part of Abbott 17 Laboratories. We were Hospira. 18 Q. And is that when you ceased as an Abbott 19 employee? 20 A. Yes. 21 Q. Okay. And what was your job after April 22 -- or in April of 2004?</p> |

18 (Pages 66 to 69)

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| <p style="text-align: right;">Page 122</p> <p>1 compendia and the calculation of AWP?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. You didn't have any understanding of that</p> <p>6 relationship?</p> <p>7 A. I didn't have any understanding of it,</p> <p>8 no.</p> <p>9 Q. Do you -- were there any resources that</p> <p>10 you were familiar with that could have helped you</p> <p>11 identify that understanding?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I have no idea.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Did you have any other responsibilities</p> <p>16 when you were the general manager for Home Infusion</p> <p>17 Services?</p> <p>18 A. No. That kept me pretty busy.</p> <p>19 Q. So we've exhausted your memory on what</p> <p>20 you, what your responsibilities were?</p> <p>21 A. Yes, yes.</p> <p>22 Q. And then, sir, in 2000 you moved on to</p> | <p style="text-align: right;">Page 124</p> <p>1 THE WITNESS: I, I believe we may have.</p> <p>2 I, I can't tell you who. We may have.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Okay. Did you have any other</p> <p>5 responsibilities after 2000 for Home Infusion</p> <p>6 Services?</p> <p>7 A. Well, it went into 2001. We actually --</p> <p>8 I don't -- I think we actually closed all the</p> <p>9 things down at the end of 2001.</p> <p>10 Q. Let me ask you this, I meant to ask you</p> <p>11 this before: When you were -- for the seven-and-a-</p> <p>12 half years that you were the general manager of</p> <p>13 Home Infusion Services, did you have any</p> <p>14 responsibilities with regard to Abbott's</p> <p>15 pharmacies?</p> <p>16 A. Yes, they reported into that business</p> <p>17 unit.</p> <p>18 Q. What were your responsibilities with</p> <p>19 regard to Abbott's pharmacies?</p> <p>20 A. The operation of the pharmacies.</p> <p>21 Q. At -- at any point -- well, how many</p> <p>22 pharmacies did Abbott have?</p> |
| <p style="text-align: right;">Page 123</p> <p>1 the general manager for Contract Marketing and then</p> <p>2 for Home Infusions Services, and then ultimately</p> <p>3 Home Infusions Services was phased out?</p> <p>4 A. Right.</p> <p>5 Q. During this period of time was your</p> <p>6 responsibilities with regard to Home Infusion</p> <p>7 Services to oversee the phasing out of that</p> <p>8 business?</p> <p>9 A. Yes.</p> <p>10 Q. What was done with the CHIP system?</p> <p>11 A. As I, as I understand -- we, we tried to</p> <p>12 work with our clients to get as many clients off</p> <p>13 the CHIP system as possible. And at some point we</p> <p>14 decommissioned it.</p> <p>15 Q. Okay. Did you license it?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Did I license it?</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Well, did, did Abbott -- I'm sorry, did</p> <p>20 Abbott license the CHIP system to, to any third</p> <p>21 parties that you're aware of or former clients?</p> <p>22 MS. TABACCHI: Object to the form.</p> | <p style="text-align: right;">Page 125</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: When I, when I assumed the</p> <p>3 position in '92 we had three pharmacies.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Do you remember where they were located?</p> <p>6 A. One was in Fairfield, New Jersey, one was</p> <p>7 in Abbott Park, Illinois, and one was in Santa Fe</p> <p>8 Springs, California.</p> <p>9 Q. And did those pharmacies seek</p> <p>10 reimbursement from or bill to the Medicaid --</p> <p>11 Medicare or Medicaid programs?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. None at all?</p> <p>16 A. No.</p> <p>17 Q. I just want to make it clear. The Abbott</p> <p>18 pharmacies did not at any time during your tenure,</p> <p>19 your seven-and-a-half years as the director</p> <p>20 overseeing Home Infusion, bill to Medicaid or</p> <p>21 Medicare?</p> <p>22 A. No, they didn't.</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 Q. What about catalog pricing, same 2 responsibilities as you had before? 3 A. Yes. 4 Q. Any additional responsibilities with 5 regard to catalog pricing? 6 A. No. 7 Q. Well, let me ask you, during this period 8 of time did you have increased responsibilities 9 because the Hospital Business Sector, Contract 10 Marketing had absorbed the Alt. Site Contract 11 Marketing? 12 A. Well, I think I said that before that 13 around the middle of 2000 I was given the direct 14 responsibility for those contracting efforts. 15 Q. And I -- you did say that before. My 16 question is did that increase your workload and 17 your responsibilities, I guess? 18 A. Yes. 19 Q. Okay. Was there any difference between 20 how Alt. Site Contract Marketing went about pricing 21 its contracts and how the Hospital Business Sector 22 priced its contracts?</p> | <p style="text-align: right;">Page 132</p> <p>1 Object to the form. 2 THE WITNESS: It would be a surprise. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Why do you say that it was not our 5 practice? 6 A. It just wasn't our practice. In fact, I 7 believe the late, late '90s we had instructed the 8 sales force that it was not our practice. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. And how did you instruct the sales force 11 in the late '90s that it was not your practice? 12 A. Pete Baker in his communication to me 13 said that there was some instruction given to them 14 around that time frame. 15 Q. Do you know whether it was oral or 16 written? 17 A. No, I don't. 18 Q. Is your understanding that there was an 19 instruction based exclusively upon your 20 conversation with Pete Baker? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: Is my knowledge?</p> |
| <p style="text-align: right;">Page 131</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I'm sure there were some 3 inherent differences, but I'm not aware of any, any 4 fundamental differences, no. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Well, was AWP important to the Alt. Site 7 customers, to your knowledge? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I have no idea whether it 10 was important to them or not. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. Do you know whether the sales force as 13 part of proposal analyses provided AWP information 14 to Alt. Site customers? 15 A. That was not our practice. 16 Q. You're certain of that? 17 A. Yes. 18 Q. Well, we've heard testimony in this case 19 that proposal analyses provided to customers 20 included an AWP analysis on a regular basis. Were 21 you aware of that? 22 MS. TABACCHI: Object to the form.</p> | <p style="text-align: right;">Page 133</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Yes. 3 A. That specific knowledge, yes, with regard 4 to that. 5 Q. Okay. Do you have any other -- other 6 than your -- 7 A. Other than, other than that, it's just a 8 general haze somewhere back here that -- 9 Q. Well, you seem somewhat certain that that 10 was not your practice in Alt. Site to provide AWP 11 information to Alt. Site customers. I want to know 12 why you're so certain of that? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I just, I just -- my 15 general recollection is, is that, you know, we had 16 -- we had, we just didn't handle that. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. And what is the basis of that 19 recollection? 20 A. Again, I don't -- 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: It's general recollection.</p> |

34 (Pages 130 to 133)

Sellers, Michael W. HIGHLY CONFIDENTIAL
Chicago, IL

November 1, 2007

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 I, JANICE M. KOCEK, a Certified Shorthand
5 Reporter within and for the County of Cook and State
6 of Illinois, do hereby certify that heretofore,
7 to-wit, on the 1st day of November 2007, personally
8 appeared before me MICHAEL SELLERS in a cause now
9 pending and undetermined in the United States District
10 Court, in re the Pharmaceutical Industry Average
11 Wholesale Price Litigation are the Plaintiffs, and
12 Abbott Laboratories, Inc. and Hospira, Inc. are the
13 Defendants.
14 I further certify that the said witness was
15 first duly sworn to testify the truth, the whole truth
16 and nothing but the truth in the cause aforesaid; that
17 the testimony then given by said witness was reported
18 stenographically by me in the presence of the said
19 witness, and afterwards reduced to typewriting by
20 Computer-Aided Transcription, and the foregoing is a
21 true and correct transcript of the testimony so given
22 by said witness as aforesaid.

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1 I further certify that the taking of this
2 deposition was pursuant to notice, and that there were
3 present at the deposition the attorneys hereinbefore
4 mentioned.
5 I further certify that I am not counsel for
6 nor in any way related to the parties to this suit,
7 nor am I in any way interested in the outcome thereof.
8 IN TESTIMONY WHEREOF: I have hereunto set
9 my hand this 12th day of November, 2007.

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12
13 _____
14 JANICE M. KOCEK, C.S.R.
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85 (Pages 334 to 335)

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EXHIBIT 75

30(b)(6) Abbott (Sellers, Michael)

March 16, 2008

Page 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS

Videotaped Rule 30(b)(6) Deposition
of MICHAEL SELLERS, at 77 West Wacker
Drive, Chicago, Illinois, commencing
at 9:00 a.m. on Sunday, March 16,
2008, before Donna M. Kazaitis, RPR,
CSR No. 084-003145.

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30(b)(6) Abbott (Sellers, Michael)

March 16, 2008

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| <p style="text-align: right;">Page 162</p> <p>1 Abbott forms that I would not have expected to 2 have been in the hands of the compendia, all of 3 the other Abbott, the forms that we looked at that 4 were in what I would have considered the 5 communication format that we made to the 6 compendia, I would have no reason to think that 7 they were erroneous. 8 I think Jerrie was a very diligent 9 employee and took a lot of pride in what she did 10 and what she was responsible for. And I valued 11 that. 12 MS. ST. PETER-GRIFFITH: Okay. Why 13 don't we take a lunch break. 14 THE VIDEOGRAPHER: We are off the record 15 at 12:58 p.m. with the end of Tape No. 3. 16 (WHEREUPON a lunch recess was 17 taken, and said deposition 18 continued as follows:) 19 20 21 22</p> | <p style="text-align: right;">Page 164</p> <p>1 they published to subscribers throughout the 2 country. 3 Q. What was your, what is Abbott's 4 understanding of the correlation between the 5 prices it reported to the pricing compendia and 6 the calculation of average wholesale price or AWP? 7 MS. TABACCHI: Object to the form. I 8 have a problem with the lack of timeframe. What 9 is Abbott's understanding today? 10 MS. ST. PETER-GRIFFITH: No, I'm sorry. 11 Fair enough. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. '91 through 2003. 14 A. I think. 15 MS. TABACCHI: I still object to the 16 form as just overbroad in that sense. 17 THE WITNESS: I think in general within 18 Abbott Hospital Products Division, there wasn't an 19 appreciation of a relationship between the prices 20 we reported and AWP that was published by the 21 agencies, nor the importance or significance of 22 AWP to anyone.</p> |
| <p style="text-align: right;">Page 163</p> <p>1 THE VIDEOGRAPHER: We are back on the 2 record at 1:45 p.m. with the beginning of Tape 3 No. 4. 4 MICHAEL SELLERS, 5 having been previously duly sworn, was examined 6 and testified further as follows: 7 EXAMINATION 8 (Continuing) 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Mr. Sellers, before the break we went 11 through a series of documents concerning Abbott's 12 price reporting of its catalog and list prices to 13 the price reporting compendia. 14 What was Abbott's understanding of 15 what the price reporting compendia would do with 16 the prices that Abbott reported to them? 17 A. They would publish those products and 18 those prices. I believe there was some other data 19 that they published with regard to the product. 20 But they would publish that in their database that 21 they sold to various people within the industry as 22 well as within the actual hard copy books that</p> | <p style="text-align: right;">Page 165</p> <p>1 So I think in general there wasn't 2 an appreciation within Abbott for that. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Well, what did Abbott understand the 5 relationship to be, Abbott, at any portion of 6 Abbott? 7 MS. TABACCHI: Object to the form. 8 Could you please read back the 9 question. 10 (WHEREUPON said record was read 11 back as requested.) 12 BY MS. ST. PETER-GRIFFITH: 13 Q. When I say the relationship, I mean the 14 relationship between the calculation of AWP and 15 the prices reported by Abbott. 16 A. Again, I think there were a very few, 17 especially the early part of the 1990s, there were 18 very few people within Abbott Hospital Products 19 Division that even knew an AWP existed. And even 20 fewer people had any concept of what kind of 21 relationship AWP may or may not have had with the 22 prices we published.</p> |

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30(b)(6) Abbott (Sellers, Michael)

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|--|---|
| <p>1 Q. Well, who within Abbott, and I don't</p> <p>2 want you to limit it necessarily to HPD, I'm</p> <p>3 talking Abbott-wide, who within Abbott had an</p> <p>4 understanding of the relationship between the</p> <p>5 prices reported by Abbott to the pricing compendia</p> <p>6 and the pricing compendia's calculations of AWP?</p> <p>7 MS. TABACCHI: I'm going to object to</p> <p>8 the form. Also it's beyond the scope of the</p> <p>9 Notice.</p> <p>10 To the extent that Mr. Sellers is</p> <p>11 aware of communications among divisions on this</p> <p>12 topic, that would be one thing. But he's not here</p> <p>13 to testify with respect to any other division</p> <p>14 other than the Hospital Products Division.</p> <p>15 I understand you're seeking</p> <p>16 corporate testimony, but he can't testify on</p> <p>17 behalf of the Pharmaceutical Products Division for</p> <p>18 example.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Well, if any division, let me ask you</p> <p>21 this, sir: If any division in Abbott had an</p> <p>22 understanding of what AWP was, would that</p> | <p>1 segmented into the Hospital Products Division,</p> <p>2 it's Abbott Corporation.</p> <p>3 A. Yes.</p> <p>4 MS. ST. PETER-GRIFFITH: If you read</p> <p>5 that prior question back, please.</p> <p>6 (WHEREUPON said record was read</p> <p>7 back as requested.)</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 Mr. Sellers can provide testimony</p> <p>10 on behalf of what the Hospital Products Division</p> <p>11 knew.</p> <p>12 MS. ST. PETER-GRIFFITH: He's here as</p> <p>13 Abbott's corporate rep.</p> <p>14 MS. TABACCHI: He is testifying on</p> <p>15 behalf of the corporation. But it's overly broad</p> <p>16 to have expected him to go research fifteen years</p> <p>17 of history in other divisions that are not related</p> <p>18 to the issues in this case or the drugs that were</p> <p>19 named in the Complaint.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Sir, can you answer the question?</p> <p>22 A. No.</p> |
| Page 167 | Page 169 |
| <p>1 understanding be different in another division?</p> <p>2 MS. TABACCHI: Object to the form. I</p> <p>3 don't know how he can answer that.</p> <p>4 THE WITNESS: I can't answer it if I</p> <p>5 don't have any knowledge of what others might have</p> <p>6 known.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Well, my question to you is what did</p> <p>9 Abbott as a corporation know about the correlation</p> <p>10 between prices reported to the pricing compendia</p> <p>11 and the pricing compendia's calculations of AWP?</p> <p>12 MS. TABACCHI: Object to the form,</p> <p>13 beyond the scope of the Notice.</p> <p>14 THE WITNESS: Again, I can only speak to</p> <p>15 the segment of Abbott which is the Hospital</p> <p>16 Products Division that I was part of and that as I</p> <p>17 understood was part of this proceedings.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Well, you understand that Abbott</p> <p>20 Corporation is a defendant; don't you, sir?</p> <p>21 A. I do.</p> <p>22 Q. And it's not Abbott Corporation as</p> | <p>1 Q. How come?</p> <p>2 A. I can talk about the Hospital Products</p> <p>3 Division. I can't venture to speculate on what</p> <p>4 other parts of Abbott knew or didn't know.</p> <p>5 Q. Well, if other parts of Abbott knew that</p> <p>6 there was a correlation between the calculation of</p> <p>7 AWP and the reporting of prices to the price</p> <p>8 reporting compendia by Abbott, don't you think</p> <p>9 that's something that should have been known</p> <p>10 throughout the corporation?</p> <p>11 MS. TABACCHI: Object to the form,</p> <p>12 beyond the scope.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Why not?</p> <p>16 MS. TABACCHI: Same objections.</p> <p>17 THE WITNESS: For one thing, within the</p> <p>18 Hospital Products Division AWP had no significance</p> <p>19 to anybody. So it wasn't something that was</p> <p>20 relevant to what we did day-to-day.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Was it relevant to the Home Infusion</p> |

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30(b)(6) Abbott (Sellers, Michael)

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| Page 170 | Page 172 |
|---|---|
| <p>1 Business unit?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Remotely.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. How so?</p> <p>6 A. Because it didn't necessarily define</p> <p>7 reimbursement for Home Infusion customers.</p> <p>8 It was a factor in some cases for</p> <p>9 some payors for some period of time. It's a very</p> <p>10 fragmented component.</p> <p>11 Even within the Home Infusion</p> <p>12 Services, I don't think anybody spent a lot of</p> <p>13 time wondering about whether AWP had any</p> <p>14 mathematical relationship to other numbers.</p> <p>15 Q. For those individuals that did have an</p> <p>16 understanding of the relationship between the</p> <p>17 prices reported by Abbott to the pricing compendia</p> <p>18 and the calculation of AWP by the pricing</p> <p>19 compendia, what was that understanding?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: As I have been able to</p> <p>22 piece together from both my working experience as</p> | <p>1 Q. Well, is Abbott aware of anyone else who</p> <p>2 had this information?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 beyond the scope.</p> <p>5 THE WITNESS: Again, I've not talked to</p> <p>6 either one of those people. I can't give you a</p> <p>7 list of people that might have known something.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Well, sir, what did you do to prepare</p> <p>10 for today's deposition to educate yourself</p> <p>11 concerning the company's understanding of the</p> <p>12 relationship between AWP and the prices reported</p> <p>13 by Abbott to the pricing compendia?</p> <p>14 MS. TABACCHI: What topic are you on,</p> <p>15 Ann?</p> <p>16 MS. ST. PETER-GRIFFITH: I'm on a</p> <p>17 variety of topics. I'm on 12, I'm on 11, I'm on</p> <p>18 9, I'm on 8.</p> <p>19 MS. TABACCHI: Object as beyond the</p> <p>20 scope, object to the form.</p> <p>21 THE WITNESS: Again, I've done a number</p> <p>22 of depositions, this subject has come up before</p> |
| Page 171 | Page 173 |
| <p>1 well as reviewing depositions and documents, there</p> <p>2 were maybe a handful of people that understood</p> <p>3 again beginning in the early 1990s that AWP was</p> <p>4 some function of our list price.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Who were those individuals?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Probably Jerrie Cicerales,</p> <p>9 Harry Adams. I mean it was a pretty small list</p> <p>10 that I would think might have known that.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. So it's Abbott's position that it's only</p> <p>13 aware that Harry Adams and Jerrie Cicerales may</p> <p>14 have known of the correlation between the list</p> <p>15 prices reported by Abbott to the pricing compendia</p> <p>16 and the pricing compendia's calculations of AWP?</p> <p>17 MS. TABACCHI: Object to the form,</p> <p>18 beyond the scope of the Notice.</p> <p>19 THE WITNESS: You asked me for some</p> <p>20 specific people. I can't, I don't have a roster</p> <p>21 of people to go through.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p> | <p>1 I've looked at documents in the past. I've also</p> <p>2 looked at, as I said, I've looked at depositions.</p> <p>3 And I can tell you that I have not seen a</p> <p>4 prevalence of knowledge with regard to this</p> <p>5 subject.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Well, what was Abbott's understanding of</p> <p>8 the correlation between AWP and Medicare or</p> <p>9 Medicaid reimbursement?</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope.</p> <p>12 THE WITNESS: I think Virginia Tobiason</p> <p>13 and Lynn Leone have both testified that across</p> <p>14 that time period AWP was one component of the</p> <p>15 reimbursement for Home Infusion, and it was a</p> <p>16 factor. It wasn't absolute.</p> <p>17 Across that time period the</p> <p>18 functions of what was getting reimbursed may have</p> <p>19 gone from AWP plus to AWP minus in terms of</p> <p>20 percentage. And it varied by state and it may</p> <p>21 have even varied by Medicare payor or carrier. I</p> <p>22 don't know. But it definitely varied by</p> |

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| <p>1 THE WITNESS: Would permit on an</p> <p>2 exception basis the AWP information. And it was</p> <p>3 my, I would have expected that to be a fairly rare</p> <p>4 exception.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. A fairly rare occurrence?</p> <p>7 A. Yes.</p> <p>8 Q. How would the exception be approved, or</p> <p>9 would it need to be approved?</p> <p>10 MS. TABACCHI: Same objections.</p> <p>11 THE WITNESS: As I would understand, it</p> <p>12 would need to be approved by the manager of</p> <p>13 Alternate Site Product Sales -- Customer Service</p> <p>14 -- Contract Marketing, I'll get it right.</p> <p>15 Alternate Site Contract Marketing.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. So it's Abbott's testimony that in order</p> <p>18 for -- well, first, it's Abbott's testimony that</p> <p>19 it was never permissible or a practice within</p> <p>20 Abbott for Abbott's Alt. Site staff to provide</p> <p>21 spread information to Abbott customers?</p> <p>22 A. Correct.</p> | <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. From Abbott's viewpoint, what's wrong</p> <p>6 with providing AWP information --</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. -- to the customer?</p> <p>10 MS. TABACCHI: Beyond the scope.</p> <p>11 THE WITNESS: From Abbott's point of</p> <p>12 view, it's not a price that Abbott creates. So we</p> <p>13 are free and clear to present any price that</p> <p>14 Abbott controlled.</p> <p>15 So Abbott controlled list price,</p> <p>16 Abbott controlled WAC, and Abbott controlled the</p> <p>17 contract price. So those were the three prices</p> <p>18 that could be communicated.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Any other reason why it's problematic to</p> <p>21 provide AWP information to Abbott Alt. Site</p> <p>22 customers?</p> |
| Page 203 | Page 205 |
| <p>1 Q. It's also Abbott's testimony that if a</p> <p>2 customer demanded it, AWP information could be</p> <p>3 provided to the customer?</p> <p>4 A. For our products.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. For Abbott's products.</p> <p>8 But that provision would only be</p> <p>9 the provision of AWP information and not</p> <p>10 information concerning the spread?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Correct.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. And if AWP information was provided by</p> <p>15 an Alt. Site staff member, it would need to have</p> <p>16 been approved by the manager of Contract</p> <p>17 Marketing?</p> <p>18 A. I would have expected that, yes.</p> <p>19 Q. How many times did Abbott's manager of</p> <p>20 Contract Marketing approve the provision of AWP</p> <p>21 information to Abbott's Alt. Site customers for</p> <p>22 the time period from '91 to 2001?</p> | <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope of the Notice.</p> <p>3 THE WITNESS: That was it.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. What's the problem with providing spread</p> <p>6 information to Abbott's Alt. Site customers?</p> <p>7 MS. TABACCHI: Same objections.</p> <p>8 THE WITNESS: Again, it's not a number</p> <p>9 that we control, it's not a number that we operate</p> <p>10 on. So it probably would not be appropriate for</p> <p>11 us to put that number under a document with our</p> <p>12 name on top of it.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Any other reason?</p> <p>15 MS. TABACCHI: Same objections.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Sir, was it important to Abbott that its</p> <p>19 Alt. Site personnel didn't market the spread?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope of the Notice.</p> <p>22 THE WITNESS: It wasn't something that</p> |

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|---|---|
| <p style="text-align: right;">Page 206</p> <p>1 was important to us in terms of that.</p> <p>2 We marketed our products based on</p> <p>3 the breadth of the portfolio we had, on the</p> <p>4 different delivery systems we had. We were, or</p> <p>5 are, in the generic drug market, so we weren't</p> <p>6 trying to create a market for a new chemical</p> <p>7 entity, we weren't trying to create a new</p> <p>8 treatment for any malady that patients might have.</p> <p>9 What we were trying to do was say</p> <p>10 that we had a product that was equivalent to the</p> <p>11 innovator's product that could be used</p> <p>12 interchangeably with the innovator's product, and</p> <p>13 it was economical to buy and it was efficient to</p> <p>14 use based on the delivery system, and that we were</p> <p>15 a quality manufacturer and a dependable</p> <p>16 manufacturer. Where as other companies ran in and</p> <p>17 out of supply difficulties, our record was that we</p> <p>18 consistently delivered to our customers. That's</p> <p>19 how we marketed our products.</p> <p>20 Spread was not, again it wasn't a</p> <p>21 number that we generated nor did we control. So</p> <p>22 no, it was not part of our marketing approach.</p> | <p style="text-align: right;">Page 208</p> <p>1 MS. TABACCHI: Object to the form,</p> <p>2 beyond the scope.</p> <p>3 THE WITNESS: I've seen a number of</p> <p>4 documents during this process where our customer</p> <p>5 may have told us things about what was of interest</p> <p>6 to them.</p> <p>7 So we're aware of what they were</p> <p>8 looking for. Their bid documents stated it quite</p> <p>9 often as to what they were interested in. They</p> <p>10 were interested in low prices. They were</p> <p>11 interested in a full breadth of product, they were</p> <p>12 interested in ability to get that product, did we</p> <p>13 have delivery points that were close to all the</p> <p>14 customers. That was particularly important to</p> <p>15 Alt. Site customers because they didn't have some</p> <p>16 of the options that hospitals had at getting these</p> <p>17 kind of products.</p> <p>18 So those were the things that were</p> <p>19 of interest to them, and those are the kind of</p> <p>20 things that we tried to understand from our</p> <p>21 customers as we prepared proposals for them.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p> |
| <p style="text-align: right;">Page 207</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, to the extent that Abbott's AWP's</p> <p>3 or the AWP's on Abbott's products had a direct</p> <p>4 correlation to the list prices reported to the</p> <p>5 pricing compendia, how can Abbott say that it</p> <p>6 didn't control or have any influence over spreads?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope of the Notice.</p> <p>9 THE WITNESS: We had no control over</p> <p>10 whether it was a factor of list or whether it was</p> <p>11 a factor of WAC, what factor it was, how those</p> <p>12 factors might or might not have changed.</p> <p>13 And the other was we had no</p> <p>14 knowledge about how the product was going to be</p> <p>15 used and what kind of patient might receive that</p> <p>16 product.</p> <p>17 What we were trying to do was</p> <p>18 market a generic drug as competitively priced,</p> <p>19 quality, delivery, dependability.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Did Abbott have an understanding of its</p> <p>22 Alt. Site customers' interest in AWP spread?</p> | <p style="text-align: right;">Page 209</p> <p>1 Q. So Abbott did have an understanding that</p> <p>2 AWP spread on its products was important to its</p> <p>3 Alt. Site customers?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope.</p> <p>6 THE WITNESS: I think what I said was</p> <p>7 that I've seen some documents where our Alt. Site</p> <p>8 GPOs may have represented that AWP was an</p> <p>9 important factor, a factor, in their decisions.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Is that a "Yes"?</p> <p>12 MS. TABACCHI: Object to the form, asked</p> <p>13 and answered.</p> <p>14 THE WITNESS: Not all of our customers</p> <p>15 looked at it, no.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. How do you know that not all of your</p> <p>18 customers looked at it?</p> <p>19 MS. TABACCHI: Same objections.</p> <p>20 THE WITNESS: Well, at least they didn't</p> <p>21 represent it, and it wasn't a major topic of</p> <p>22 conversation when we talked to our customers.</p> |

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|--|---|
| <p>1 That was controlled by the Hospital</p> <p>2 Business Sector product management. Their</p> <p>3 customer base was the hospital. If you asked</p> <p>4 them, their concept was that that customer was</p> <p>5 reimbursed by DRGs and what they were interested</p> <p>6 in was a lower contract price.</p> <p>7 The marketplace for generic drugs</p> <p>8 is a very competitive one and much like any other</p> <p>9 type of generic product where multiple companies</p> <p>10 are offering the same service or the same product</p> <p>11 to the marketplace, a lot of how that competition</p> <p>12 evolves, it evolves into price.</p> <p>13 And it was especially exacerbated</p> <p>14 in this market because we were constantly</p> <p>15 introducing new generic drugs. And new generic</p> <p>16 drugs come from an innovator price, which is up</p> <p>17 here, and go down to a generic market price where</p> <p>18 it finally stabilizes. But it usually takes</p> <p>19 eighteen to twenty-four months for that to happen.</p> <p>20 So over that eighteen to twenty-four months you</p> <p>21 see price decline.</p> <p>22 So those are the kind of things</p> | <p>1 in the Amended Complaint, what would be the</p> <p>2 business purpose of having a list price that was</p> <p>3 one hundred, two hundred, three hundred, a</p> <p>4 thousand percent higher than what the contract</p> <p>5 price was?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Well, I think as we looked</p> <p>8 at it in 2001, we said there doesn't appear to be</p> <p>9 a purpose other than to capture elevated prices on</p> <p>10 noncontract sales. So in 2001 that's when we</p> <p>11 decided that we should bring those prices more in</p> <p>12 line.</p> <p>13 But I don't believe that the people</p> <p>14 that were operating on the prices in that '91</p> <p>15 through 1999 timeframe were focusing on that.</p> <p>16 They were focusing on one number here and they</p> <p>17 were focusing on other numbers down here. They</p> <p>18 weren't trying to reconcile the two.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Well, did the individuals setting prices</p> <p>21 in HBS have any understanding of the relationship</p> <p>22 between list price and the AWP-based reimbursement</p> |
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| <p>1 that when you look at from 1991 through to 1999</p> <p>2 contributed to this what we called an inadvertent</p> <p>3 disparity because people weren't looking and</p> <p>4 managing that differential. What they were</p> <p>5 managing was the top end and they were managing a</p> <p>6 range at the bottom end. So it creates that</p> <p>7 disparity over time.</p> <p>8 Again, it was not pervasive across</p> <p>9 the entire product line. It was across some of</p> <p>10 the products, a good number of products I admit,</p> <p>11 but some of the products. Other products we</p> <p>12 thought continued to have market relevant list</p> <p>13 price. In other words, a list price that was</p> <p>14 within a reasonable range of what the prevailing</p> <p>15 market prices were in contracts.</p> <p>16 So that's what caused the</p> <p>17 disparity. And it was from 1991 through 1999.</p> <p>18 That's when the catalog price increases were done</p> <p>19 on an annual basis.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Well, for Abbott's HPD products,</p> <p>22 including the subject drugs which are identified</p> | <p>1 of Medicare and Medicaid for the Alt. Site</p> <p>2 customers?</p> <p>3 A. No.</p> <p>4 Q. How do you know that?</p> <p>5 A. I know it from having dealt with them, I</p> <p>6 know it from Gerry Eikorn's testimony, Mark</p> <p>7 Sebree's testimony, both of them being</p> <p>8 representatives of the Hospital Business Sector.</p> <p>9 Q. Sir, previously you testified that you</p> <p>10 had seen some documents that made you understand</p> <p>11 or appreciate that some of Abbott's Alt. Site</p> <p>12 customers requested as part of their bid process</p> <p>13 or considered as part of their bid process AWP</p> <p>14 information.</p> <p>15 I'd like to show you some exhibits</p> <p>16 now.</p> <p>17 MS. ST. PETER-GRIFFITH: Can we mark</p> <p>18 this as the next exhibit.</p> <p>19 (WHEREUPON Exhibit Sellers 008 was</p> <p>20 marked as of 3/16/2008.)</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. As you're flipping through the document,</p> |

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| <p>1 Medicare and Medicaid reimbursement?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Abbott Home Infusion's</p> <p>4 customers' reimbursement would go down on</p> <p>5 products, and therefore, our share would go down.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. So Abbott shared in the higher</p> <p>8 reimbursements that were caused by Abbott's higher</p> <p>9 list prices which in turn created higher AWP's?</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope.</p> <p>12 THE WITNESS: Abbott had a share in the</p> <p>13 agreements that we had that we would get a share</p> <p>14 of the collections for those contracts. That</p> <p>15 involved risk sharing on both our sides, both the</p> <p>16 client as well as Abbott.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. What do you mean by "risk sharing"?</p> <p>19 A. Well, when you go into a business</p> <p>20 there's always risk. When you go into a business,</p> <p>21 you risk whether you're going to get, especially</p> <p>22 in a Home Infusion business, whether you're going</p> | <p>1 we offered them. And we had our products that</p> <p>2 were available to them.</p> <p>3 Q. Other than the collection of</p> <p>4 reimbursement that Abbott shared in for its Home</p> <p>5 Infusion business all these services that you</p> <p>6 described and the products that Abbott provided,</p> <p>7 those were provided free of charge?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Were there individual prices that were</p> <p>12 charged to the Home Infusion clients for the</p> <p>13 products that were consigned to them?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Were there individual charges for the</p> <p>18 services that Abbott provided incident to the</p> <p>19 contractual agreement?</p> <p>20 A. No.</p> <p>21 Q. Abbott simply shared in the collection</p> <p>22 of revenues that the Home Infusion partners were</p> |
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| <p>1 to get the patient load that you need to keep</p> <p>2 going. There's risk as to what mix of patients</p> <p>3 you get, both in terms of therapy and in terms of</p> <p>4 the payors that are involved.</p> <p>5 So each of us documented within our</p> <p>6 agreements with our clients contributed to each of</p> <p>7 those businesses and got some share of the revenue</p> <p>8 from both of those businesses.</p> <p>9 Q. How did Abbott contribute?</p> <p>10 A. Abbott contributed through services,</p> <p>11 getting the customer started, setting up</p> <p>12 procedures and practices.</p> <p>13 We helped the ones that wanted to</p> <p>14 open their own pharmacy by designing their</p> <p>15 pharmacy and using our engineers to help them</p> <p>16 complete the projects. We trained them in running</p> <p>17 that pharmacy. We shared with them the</p> <p>18 experiences that we had in our own pharmacies. We</p> <p>19 also shared with them marketing training for their</p> <p>20 salespeople.</p> <p>21 We also had reimbursement services</p> <p>22 that we offered them. We had the CHIP system that</p> | <p>1 reimbursed from third-party payors?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Well, I'm not sure I would</p> <p>4 agree with "simply."</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Okay.</p> <p>7 A. There was a detailed contract between</p> <p>8 both parties that detailed what each party was</p> <p>9 going to do to guarantee the success of the</p> <p>10 business. And for that there was an agreement by</p> <p>11 both parties that there would be a revenue split</p> <p>12 by therapy so that each party was compensated</p> <p>13 appropriately.</p> <p>14 Q. Well, what would Abbott charge as the</p> <p>15 arm's length transactional price for the products</p> <p>16 consigned to its revenue share partners?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: We didn't have a price</p> <p>19 between us.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Sir, what would Abbott charge as the</p> <p>22 arm's length fair market value of the services it</p> |

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|---|--|
| <p>1 provide incident to the revenue share agreements?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: We didn't value those</p> <p>4 services separately.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. How did you come up with the figures of</p> <p>7 \$0.6 million and \$1.8 million?</p> <p>8 A. I don't recall. But it was a similar,</p> <p>9 if the assumption is correct, extending the logic</p> <p>10 of that assumption, this is the impact we would</p> <p>11 see.</p> <p>12 Q. Well, under Annualized it has</p> <p>13 \$1.8 million. What did you mean by "Annualized"?</p> <p>14 A. For a full year.</p> <p>15 Q. So just it was 2001 only that at that</p> <p>16 point in time in 2001 that you were estimating</p> <p>17 that?</p> <p>18 MS. TABACCHI: Object to form.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. I'm sorry. Under 2001, you're just</p> <p>21 talking about that that's the risk for the</p> <p>22 remainder of 2001?</p> | <p>1 decision to close. So we planned it to tail out</p> <p>2 at some point.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Was the closure expedited because of the</p> <p>5 projected potential impact of the reductions of</p> <p>6 list prices contemplated in 2001?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. How much money did Home Infusion make on</p> <p>11 an annual basis?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: It depends on the year.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Well, in 2000 how much did they make?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I don't have those numbers</p> <p>18 in front of me.</p> <p>19 MS. TABACCHI: Beyond the scope of the</p> <p>20 Notice.</p> <p>21 THE WITNESS: Maybe \$25 million.</p> <p>22 (WHEREUPON Exhibit Sellers 015</p> |
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| <p>1 A. That was our estimate of a potential</p> <p>2 risk for the remainder of the year, yes.</p> <p>3 Q. When was the decision made to close the</p> <p>4 Home Infusion business unit?</p> <p>5 A. You've switched gears on me.</p> <p>6 Q. It has a relationship.</p> <p>7 MS. TABACCHI: Asked and answered.</p> <p>8 THE WITNESS: 1997 I believe.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. And when was the decision made to</p> <p>11 finally close the doors?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Meaning what years would the doors be</p> <p>16 closed on Home Infusion?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I think it was either, I</p> <p>19 think it was the end of 2001 or the, it was end of</p> <p>20 2001 or end of 2002, something in that range.</p> <p>21 I think we had a five-year</p> <p>22 agreement in place or more when we made the</p> | <p>1 was marked as of 3/16/2008.)</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Sir, do you recognize this document?</p> <p>4 (Document tendered to the witness.)</p> <p>5 A. Yes.</p> <p>6 Q. Who drafted it?</p> <p>7 A. I believe I did.</p> <p>8 Q. Why was this document drafted?</p> <p>9 MS. TABACCHI: I'll caution the witness</p> <p>10 not to reveal communications with counsel.</p> <p>11 THE WITNESS: It was documented to, it</p> <p>12 was intended to document how we intended on</p> <p>13 managing list price adjustments going forward from</p> <p>14 2001.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. So was this sort of a plan of action for</p> <p>17 what would occur once the 2001 price changes were</p> <p>18 made?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Sir, can you explain under definition of</p> |

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| <p>1 "list price" what that definition is?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: It says "the highest price</p> <p>4 published for a product in the catalog and/or</p> <p>5 submitted to the industry clearinghouses for</p> <p>6 general distribution."</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Was that Abbott's understanding in 2001</p> <p>9 of the definition or how it defined "list price"?</p> <p>10 A. Yes.</p> <p>11 Q. How long had it used that definition of</p> <p>12 "list price"?</p> <p>13 A. I think that's always been our</p> <p>14 definition of "list price."</p> <p>15 Q. What about WAC, where it says WAC</p> <p>16 Wholesaler, or I'm sorry, Wholesale Acquisition</p> <p>17 Cost, in 2001 was that Abbott's definition of</p> <p>18 "WAC"?</p> <p>19 A. I was just reading this again. Could</p> <p>20 you repeat your question?</p> <p>21 Q. Sure.</p> <p>22 MS. ST. PETER-GRIFFITH: Could you read</p> | <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Pre '91?</p> <p>3 A. 1991.</p> <p>4 Q. Okay. So from 1991 to 2001, what you</p> <p>5 just described was how Abbott defined "WAC"?</p> <p>6 A. Yes.</p> <p>7 Q. Charge-back. In 2001 was that Abbott's</p> <p>8 definition of "charge-back"?</p> <p>9 A. Yes.</p> <p>10 Q. How long had Abbott maintained this</p> <p>11 particular definition of "charge-back"?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: That's always been our</p> <p>14 definition of "charge-back."</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. And ASP, or average selling price, do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Was that Abbott's definition of "ASP" in</p> <p>20 2001?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: It's one definition. It's</p> |
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| <p>1 it back.</p> <p>2 (WHEREUPON said record was read</p> <p>3 back as requested.)</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. How long had Abbott maintained that</p> <p>7 definition of "WAC"?</p> <p>8 A. Since the price change.</p> <p>9 Q. Since 2001?</p> <p>10 A. Yes.</p> <p>11 Q. What was Abbott's definition of "WAC"</p> <p>12 prior to the price change?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Prior to that, WAC was the</p> <p>15 noncontract price charged to wholesalers and</p> <p>16 distributors.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. How long had Abbott maintained that</p> <p>19 definition of "WAC"?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Since the beginning of the</p> <p>22 term of this.</p> | <p>1 not, I would not say that that was the predominant</p> <p>2 definition of "ASP."</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. What was the predominant definition of</p> <p>5 "ASP"?</p> <p>6 A. The predominant definition of "ASP," if</p> <p>7 you were to look at it from a marketing point of</p> <p>8 view, would be the sales price net of both</p> <p>9 charge-backs as well as any rebates or after</p> <p>10 invoice discounts.</p> <p>11 Q. And how long had Abbott maintained that</p> <p>12 particular definition of "average selling price"?</p> <p>13 A. Since 1991.</p> <p>14 Q. Why did Abbott have two definitions for</p> <p>15 "ASP"?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I think what was defined</p> <p>18 here is this is how ASP is used within this</p> <p>19 document.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay.</p> <p>22 A. So it's not, it wasn't intended to</p> |

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| <p style="text-align: right;">Page 270</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay.</p> <p>3 A. That's why NDC, NDA, and ANDA.</p> <p>4 Q. Did other divisions within Abbott adopt</p> <p>5 the same policy?</p> <p>6 MS. TABACCHI: Object to the form,</p> <p>7 beyond the scope.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Then the next sentence reads "Efforts</p> <p>11 will be made to apply this policy to products</p> <p>12 under co-promotion or co-marketing agreements with</p> <p>13 other manufacturers based upon mutual agreement of</p> <p>14 both parties."</p> <p>15 What does that mean?</p> <p>16 A. At the time we had a number of products</p> <p>17 that were manufactured by other companies that we</p> <p>18 sold. Some were manufactured with our label on</p> <p>19 it, some were manufactured with the other</p> <p>20 company's label on it. And some of those, those</p> <p>21 agreements had varying terms in them. Some we</p> <p>22 could determine the price of the product, some the</p> | <p style="text-align: right;">Page 272</p> <p>1 THE VIDEOGRAPHER: We are back on the</p> <p>2 record at 4:29 p.m. with the beginning of Tape</p> <p>3 No. 6.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Mr. Sellers, we were looking at Exhibit</p> <p>6 15, and I'd like to direct your attention to the</p> <p>7 paragraph that begins with the bolded word</p> <p>8 "Process," and it extends over to the next page.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Was this as of 2001 the process that was</p> <p>12 implemented by Abbott for calculating its HPD list</p> <p>13 prices?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: This delineates the</p> <p>16 intended steps that Contract Marketing would go</p> <p>17 through in defining future changes to list price</p> <p>18 and WAC.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. So if in the future WAC or list price</p> <p>21 needed to be changed, this is how the HPD Contract</p> <p>22 Marketing personnel would go about doing it?</p> |
| <p style="text-align: right;">Page 271</p> <p>1 manufacturer of the product determined the prices</p> <p>2 for the products.</p> <p>3 So basically what we were trying to</p> <p>4 catch in that sentence is in the first sentence</p> <p>5 we've controlled everything Abbott makes, all</p> <p>6 00074s, we've got that under control. Anything we</p> <p>7 don't make we will talk to the other companies and</p> <p>8 try to get them in line with that same</p> <p>9 arrangement. But we couldn't say we would</p> <p>10 definitively do it because we weren't privy to all</p> <p>11 of the contracts that we might have with those</p> <p>12 companies.</p> <p>13 So it was intended to be this is</p> <p>14 what we ought to try to do, we ought to try to get</p> <p>15 them in line with what we were doing.</p> <p>16 MS. ST. PETER-GRIFFITH: Okay. We've</p> <p>17 got five minutes left on the tape. Can we take a</p> <p>18 brief break?</p> <p>19 THE WITNESS: Sure.</p> <p>20 THE VIDEOGRAPHER: We are off the record</p> <p>21 at 4:16 p.m. with the end of Tape No. 5.</p> <p>22 (WHEREUPON a recess was taken.)</p> | <p style="text-align: right;">Page 273</p> <p>1 A. The intention, though it's not stated</p> <p>2 here I don't believe, but the intention is that a</p> <p>3 review of our list prices would remain an annual</p> <p>4 process. And as you went through that review,</p> <p>5 whenever you did it you would go through these</p> <p>6 steps to assure that the prices remained within a</p> <p>7 relative proximity of the prevailing market</p> <p>8 prices.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Prior to 2001 and the implementation of</p> <p>11 this policy for list price adjustments, did Abbott</p> <p>12 have such, Abbott's HBS or Contract Marketing,</p> <p>13 have such a process in place?</p> <p>14 A. No.</p> <p>15 Q. So this was the first time this process</p> <p>16 was implemented?</p> <p>17 A. Yes.</p> <p>18 Q. What process was in place for reviewing</p> <p>19 list prices from 1991 until the implementation of</p> <p>20 this policy?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: There wasn't a documented</p> |

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| <p>1 process.</p> <p>2 The practice, as I've said before,</p> <p>3 was one of looking at inflationary indices and</p> <p>4 then applying those to the list prices, reviewing</p> <p>5 those with the marketing folks to make sure that</p> <p>6 there wasn't something that we had overlooked by</p> <p>7 just doing a mathematical extension, or something</p> <p>8 that was happening in the marketplace where the</p> <p>9 marketing guys didn't want to take an increase for</p> <p>10 instance.</p> <p>11 So, you know, that was the prior</p> <p>12 policy. Again, we were focusing on one price. We</p> <p>13 weren't focusing on everything else.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. So as part of that prior process, there</p> <p>16 was no consideration of the impact on list price</p> <p>17 to Alt. Site Product Sales customers?</p> <p>18 A. Correct.</p> <p>19 Q. You said "we" in your explanation. Do</p> <p>20 you mean HBS Contract Marketing?</p> <p>21 A. Yes.</p> <p>22 Q. Would the process for annual list price</p> | <p>1 don't remember this happening on a large number of</p> <p>2 products, there were some products periodically</p> <p>3 that the product manager for instance didn't want</p> <p>4 to take an increase on.</p> <p>5 There were other times where the</p> <p>6 product manager wanted more of an increase than</p> <p>7 the inflationary increase. It all depended on how</p> <p>8 they viewed the market and how they viewed the</p> <p>9 reaction the market would have to price changes.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. How is it that the policy or the</p> <p>12 practice in place prior to this policy change</p> <p>13 that's reflected in this document, how is it that</p> <p>14 on some products it resulted in differences</p> <p>15 between the list price and the contract price of</p> <p>16 multiples of a hundred, two hundred, three hundred</p> <p>17 percent for some products but for other products</p> <p>18 it didn't?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: In some cases, and I don't</p> <p>21 think there was a general rule. I mean it was, as</p> <p>22 I remember, it was all over the map. It wasn't</p> |
| Page 275 | Page 277 |
| <p>1 evaluation initiate within HBS Contract Marketing?</p> <p>2 A. Yes.</p> <p>3 Q. And then typically there would be, as</p> <p>4 you indicated, a three to five percent increase?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Depending on the year.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Depending upon the year.</p> <p>9 A. It was purely inflationary, yeah.</p> <p>10 Q. But before that went forward, someone</p> <p>11 within HBS tasked with the responsibility would go</p> <p>12 to the product line manager and get their okay</p> <p>13 that that was the appropriate increase?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 A. More or less get their consensus that,</p> <p>17 you know, they were in agreement with us.</p> <p>18 Q. Under what circumstances would a product</p> <p>19 not receive a three to five percent list price</p> <p>20 increase?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Though this didn't, I</p> | <p>1 necessarily one product line necessarily. It was</p> <p>2 some products within a product line, and some</p> <p>3 varied.</p> <p>4 Again, it depended on how dynamic</p> <p>5 the contract market was, the contract price market</p> <p>6 had been over that ten year period.</p> <p>7 We didn't go back before 1991, so I</p> <p>8 don't know, you know, I don't know how much of</p> <p>9 that was legacy prior to 1991.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. When you say "that," you mean the</p> <p>12 larger --</p> <p>13 A. The disparity.</p> <p>14 Q. -- the larger disparities?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay.</p> <p>17 A. So I think it was primarily driven by</p> <p>18 just how competitive had the market for that</p> <p>19 product been that might have driven the prevailing</p> <p>20 market prices down.</p> <p>21 Q. Okay. The next item on the second page</p> <p>22 says "Administrator," and then it indicates "The</p> |

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| <p style="text-align: right;">Page 286</p> <p>1 THE WITNESS: I think what I was saying</p> <p>2 here is unadjusted down.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Okay. So that doesn't mean that there</p> <p>5 weren't inflationary increases that were taken, as</p> <p>6 you've already testified to?</p> <p>7 A. No. I think we cover that in a later</p> <p>8 sentence.</p> <p>9 Q. Okay. Which sentence?</p> <p>10 A. The sentence that says "increases that</p> <p>11 generally approximated," that it exacerbated the</p> <p>12 differential.</p> <p>13 Q. Just the sentence before that says "due</p> <p>14 to other considerations related to contractual and</p> <p>15 government regulatory demands, HPD prior to 2000</p> <p>16 published annual increases once a year on the</p> <p>17 catalog prices." Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. What government regulatory demands</p> <p>20 caused the publication of annual increases of the</p> <p>21 catalog prices?</p> <p>22 MS. TABACCHI: Object to the form,</p> | <p style="text-align: right;">Page 288</p> <p>1 THE WITNESS: Again, I think I was</p> <p>2 reflecting back on the actual national market</p> <p>3 selling price ranges that I used up in the first</p> <p>4 paragraph.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. The next sentence reads "though a</p> <p>7 majority of eventual sales dollars are processed</p> <p>8 at steep discounts to the catalog pricing under</p> <p>9 contractual commitments, there continues to be a</p> <p>10 small portion of sales, less than one percent,</p> <p>11 which are processed at these elevated levels." Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Does that refresh your recollection as</p> <p>15 to what the annual sales volume was for</p> <p>16 noncontractual sales at list price?</p> <p>17 MS. TABACCHI: Objection, beyond the</p> <p>18 scope.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. What's now your recollection?</p> <p>22 A. It says less than one percent, so I have</p> |
| <p style="text-align: right;">Page 287</p> <p>1 beyond the scope.</p> <p>2 THE WITNESS: The only thing I can think</p> <p>3 of is, again, the requirement in the Federal</p> <p>4 Supply Schedule, that to take an increase you have</p> <p>5 to take an increase in your published price.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. What were the contractual considerations</p> <p>8 that led to the published annual increases once a</p> <p>9 year on catalog prices?</p> <p>10 A. Basically a number of our contracts</p> <p>11 allowed us to take inflationary increases. It</p> <p>12 would have been very difficult to justify taking</p> <p>13 an inflationary increase if I hadn't taken it on</p> <p>14 my list prices. So that connection is what I was</p> <p>15 alluding to.</p> <p>16 Q. The next sentence reads "increases that</p> <p>17 generally approximated the change in Consumer</p> <p>18 Price Index change for the urban market basket</p> <p>19 exacerbating any differentials to real prices in</p> <p>20 the marketplace."</p> <p>21 What are real prices in the market?</p> <p>22 MS. TABACCHI: Object to the form.</p> | <p style="text-align: right;">Page 289</p> <p>1 no reason to doubt that that was true.</p> <p>2 Q. Was that true from 1991 through to 2001?</p> <p>3 MS. TABACCHI: Same objection.</p> <p>4 THE WITNESS: I don't believe so.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Why not?</p> <p>7 MS. TABACCHI: Same objection, asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: I don't have a number but</p> <p>10 I believe that that number was higher back in</p> <p>11 1991.</p> <p>12 Plus, I had said before the</p> <p>13 quantity of noncontract sales actually could</p> <p>14 fluctuate annually based on what our competitors</p> <p>15 did or what they couldn't do that would force</p> <p>16 their customers to buy products from us.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. The next paragraph concerns the</p> <p>19 published pricing for wholesalers and</p> <p>20 distributors, wholesaler acquisition price, WAC.</p> <p>21 Now, is it "wholesale" acquisition</p> <p>22 price or "wholesaler" acquisition price?</p> |

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| <p style="text-align: right;">Page 310</p> <p>1 be.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. If you could move on -- oh, let me ask</p> <p>4 you, at any time from 1991 until 2001 did Abbott</p> <p>5 ever notify any state or federal official about</p> <p>6 what its actual contract prices were that it was</p> <p>7 charging its customers?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope of the Notice.</p> <p>10 MS. ST. PETER-GRIFFITH: No, it's not.</p> <p>11 THE WITNESS: It was not our</p> <p>12 understanding that that was a requirement of any</p> <p>13 entity.</p> <p>14 We thought the government had a</p> <p>15 good picture of our nonlist price prices. They</p> <p>16 had quarterly publications of our AMP, they had</p> <p>17 our Federal Supply Schedule prices, we had prices</p> <p>18 negotiated with the DOD.</p> <p>19 So we thought if a government</p> <p>20 agency needed it, it was within the government</p> <p>21 agency's purview already.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p> | <p style="text-align: right;">Page 312</p> <p>1 the VA contracting officers, they would tell you</p> <p>2 yes, they were, because we actually had to</p> <p>3 disclose across, whenever we either changed the</p> <p>4 price or renegotiated prices or negotiated a new</p> <p>5 contract, we had to disclose actual sales in that</p> <p>6 negotiation.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. So you disclosed --</p> <p>9 A. Our lowest price.</p> <p>10 Q. Your lowest price, which is your lowest</p> <p>11 HPD price that you charged your contractors --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- or your customers?</p> <p>14 A. Yes.</p> <p>15 Q. What indicated to the United States that</p> <p>16 your Federal Supply Schedule prices or your DOD</p> <p>17 prices were in line with your actual contract</p> <p>18 prices that you were charging customers?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I just went through that.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay. So it's the fact that DOD and the</p> |
| <p style="text-align: right;">Page 311</p> <p>1 Q. Were the DOD prices or the Federal</p> <p>2 Supply Schedule prices that you charged to the</p> <p>3 United States in line with Abbott's Alternate Site</p> <p>4 catalog prices?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Alternate Site did not</p> <p>7 have a catalog.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. HPD catalog prices.</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope of the Notice.</p> <p>12 MS. ST. PETER-GRIFFITH: It is not</p> <p>13 beyond the scope of the Notice.</p> <p>14 THE WITNESS: Federal Supply Schedule</p> <p>15 prices were contractually negotiated prices that</p> <p>16 were below our published prices.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. But were they in line with your contract</p> <p>19 prices that you were charging to your HPD</p> <p>20 customers, including your Alt. Site customers?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I think if you were to ask</p> | <p style="text-align: right;">Page 313</p> <p>1 VA received your lowest price?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. And what is it about the quarterly --</p> <p>6 A. Well, let me go back.</p> <p>7 They may or may not have been given</p> <p>8 on a contract our lowest price, but our disclosure</p> <p>9 to them had to include the lowest prices that we</p> <p>10 had billed for the products.</p> <p>11 Q. Did Abbott at any time ever go to the</p> <p>12 United States and say hey, you know, our catalog</p> <p>13 prices are much higher than the prices that we're</p> <p>14 charging under the Federal Supply Schedule or the</p> <p>15 DOD prices?</p> <p>16 MS. TABACCHI: Object to the form, asked</p> <p>17 and answered. He just testified about</p> <p>18 communications with the government.</p> <p>19 MS. ST. PETER-GRIFFITH: Counsel, don't</p> <p>20 coach the witness. If you can just let him answer</p> <p>21 the question, please.</p> <p>22 MS. TABACCHI: If you can stop asking</p> |

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30(b)(6) Abbott (Sellers, Michael)

March 16, 2008

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1 another time.

2 MS. ST. PETER-GRIFFITH: We are
3 concluded today subject to this deposition being
4 reconvened before the 31st.

5 THE VIDEOGRAPHER: We are off the record
6 at 5:32 p.m.

7 (WHEREUPON said deposition was so
8 adjourned.)
9

10

11

12 _____
13 SIGNATURE OF THE WITNESS

14 Subscribed and sworn to and before me
15 this _____ day of _____, 20____.

16

17

18

19 _____
20 Notary Public

21

22

Page 331

1 STATE OF ILLINOIS)

2 COUNTY OF C O O K)

3 I, Donna M. Kazaitis, RPR, CSR No.
4 084-003145, do hereby certify:

5 That the foregoing deposition of MICHAEL
6 SELLERS was taken before me at the time and place
7 therein set forth, at which time the witness was
8 put under oath by me;

9 That the testimony of the witness and all
10 objections made at the time of the examination
11 were recorded stenographically by me, were
12 thereafter transcribed under my direction and
13 supervision and that the foregoing is a true
14 record of same.

15 I further certify that I am neither counsel
16 for nor related to any party to said action, nor
17 in any way interested in the outcome thereof.

18 IN WITNESS WHEREOF, I have subscribed my name
19 this 18th day of March, 2008.

20

21

22 _____
Donna M. Kazaitis, RPR, CSR 084-003145

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EXHIBIT 76

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS

Volume II

Continued Videotaped Rule 30(b)(6)
Deposition of MICHAEL SELLERS, at
77 West Wacker Drive, Chicago,
Illinois, commencing at 9:00 a.m.
On Monday, March 31, 2008, before
Donna M. Kazaitis, RPR, CSR
No. 084-003145.

| | |
|---|---|
| <p style="text-align: right;">Page 345</p> <p>1 Q. Do you know what Mr. Gonzalez's role was</p> <p>2 in setting prices, either contract prices or</p> <p>3 catalog list prices?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Starting in I believe '97,</p> <p>6 '98, I'm not sure when he took over as the</p> <p>7 president of Hospital Products Division, he was</p> <p>8 responsible for the whole division. He was</p> <p>9 responsible for approving any catalog price</p> <p>10 changes, but he wasn't involved in the actual</p> <p>11 setting of the prices themselves.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Did you see the need to discuss with</p> <p>14 Mr. Gonzalez anything else concerning his</p> <p>15 involvement with the Hospital Products Division?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Why not?</p> <p>20 MS. TABACCHI: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I had personal knowledge</p> | <p style="text-align: right;">Page 347</p> <p>1 covered the topics adequately with him.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Sir, when we left off at your last</p> <p>5 deposition, we were still working through Topic 8</p> <p>6 and pricing.</p> <p>7 A. Okay.</p> <p>8 Q. I'd like to go back to that.</p> <p>9 Before I show you some documents,</p> <p>10 I'd like to ask in terms of setting of pricing,</p> <p>11 either list pricing or contract pricing, either</p> <p>12 or, okay, so any pricing that impacted the</p> <p>13 Alternate Site customers or the nonDRG reimbursed</p> <p>14 customers.</p> <p>15 A. Okay. For Alternate Site.</p> <p>16 Q. For HPD customers who are not DRG</p> <p>17 reimbursed. Does that make sense?</p> <p>18 A. Okay.</p> <p>19 Q. What role, if any, did factors like</p> <p>20 dispensing fees or copays or other risks that the</p> <p>21 provider might have impact Abbott's pricing</p> <p>22 decisions?</p> |
| <p style="text-align: right;">Page 346</p> <p>1 of a number of things. And what I was looking for</p> <p>2 in the conversation with Mr. Gonzalez was his</p> <p>3 perspective on a few items, not necessarily the</p> <p>4 details of the transactions that were going on or</p> <p>5 whatever.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Well, how about just the subject matters</p> <p>8 that are at issue in today's deposition, did you</p> <p>9 feel the need to review with him the various</p> <p>10 topics set forth in your deposition Notice?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Again, I thought the</p> <p>13 questions that were asked touched on the subjects</p> <p>14 that we needed to talk about.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Do you think it would have been</p> <p>17 important as the president of HPD to get</p> <p>18 Mr. Gonzalez's perspective on the topics that are</p> <p>19 at issue in this 30(b)(6) lawsuit?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope of the Notice.</p> <p>22 THE WITNESS: Again, I thought we</p> | <p style="text-align: right;">Page 348</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I don't believe that any</p> <p>3 of those affected or were factors in our pricing</p> <p>4 decisions.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Why not?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Again, as I think I said</p> <p>10 the last time, we marketed our products on the</p> <p>11 basis of quality, breadth of portfolio, breadth of</p> <p>12 delivery systems available, dependability of</p> <p>13 supply, and on competitive prices.</p> <p>14 So we were more intent on looking</p> <p>15 at what our competitors were offering, not</p> <p>16 necessarily what happened with the drugs after</p> <p>17 they were procured.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Well, as part of the competitive</p> <p>20 pricing, would it have been important to</p> <p>21 understand for those end users, those end</p> <p>22 providers, would it have been important for Abbott</p> |

5 (Pages 345 to 348)

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|---|---|
| <p style="text-align: right;">Page 349</p> <p>1 to understand what costs they had to consider as 2 through their business? 3 MS. TABACCHI: Object to the form, 4 beyond the scope. 5 THE WITNESS: Well, while it's always 6 important to understand your customer and what 7 drives their or what gives them motivation, 8 whatever they did to process our products was the 9 same they were going to do when they processed 10 somebody else's products. Ours were no different. 11 The only place where there was a 12 difference was where we had a delivery system that 13 would have obviated a certain process that they 14 would have had to do. 15 For instance, if we were selling a 16 pre-filled syringe product, that product could be 17 priced higher than just a vial or ampule product 18 because it eliminated steps that the provider had 19 to go through to draw up the syringe and so on. 20 So from that standpoint, it was 21 important to understand. But if they bought a 22 vial of a certain drug from us and they bought a</p> | <p style="text-align: right;">Page 351</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: The only other factor that 3 plays here is the size of the customer in terms of 4 what does the customer buy from Abbott or what 5 could the customer buy from Abbott. 6 So if, for instance, it was a large 7 GPO that brought to us two thousand members that 8 would then buy our products, they might be 9 eligible for a lower price than an individual 10 coming to us with two or three, four, or five 11 locations that might buy our drugs. 12 So the critical mass of the 13 customer may have played some role in the price 14 considerations at times. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Would it have been the contract price 17 considerations or the list price considerations or 18 both? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Purely contract. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. How did Abbott's marketing of product</p> |
| <p style="text-align: right;">Page 350</p> <p>1 vial of a certain drug, of that same drug, from 2 one of our competitors, they'd have to go through 3 the same processes to prepare the drug, administer 4 the drug, whatever else needed to go on. 5 So we really didn't take that into 6 consideration because it was really what did we 7 need to remain competitive with other drug 8 suppliers on that drug. 9 Q. Did dispensing fees for the end 10 providers ever factor into Abbott's pricing 11 decisions? 12 A. No. 13 Q. What about inventory carrying costs for 14 the end user providers, did that ever factor into 15 Abbott's pricing decisions? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: No. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Other than just the competitive price of 20 the actual product itself, was there any other 21 factor pertaining to the provider that factored 22 into Abbott's pricing decisions?</p> | <p style="text-align: right;">Page 352</p> <p>1 lines, meaning packaging more than just one 2 individual product, how did that impact pricing 3 for Abbott's individual products, if at all? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: Usually not in the subject 6 drugs that we're talking about here. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Okay. 9 A. Primarily because the awards that would 10 be made by a GPO for instance often times ended up 11 being line item awards. They weren't we're going 12 to give you every product that you bid, we're 13 going to give you, you know, instead they'd come 14 back and say no, we're going to give you a hundred 15 twenty out of the three hundred fifty products 16 that you bid we're going to give those to you and 17 we're going to give somebody else the other two 18 hundred some odd. 19 So it never was a practice to try 20 to link them together because we knew that our 21 customers, which were primarily pharmacists, not 22 professional purchasers, they liked to do a pick</p> |

6 (Pages 349 to 352)

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| Page 369 | Page 371 |
|---|---|
| <p>1 MS. TABACCHI: I'm going to object to 2 this entire line of questioning as beyond the 3 scope of the Notice. 4 THE WITNESS: It is a communication to 5 Mr. Kringel. But whether Mr. Kringel felt that 6 way or not I can't tell by this. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Well, what was Abbott's position in 1991 9 as to whether AWP was a poor indicator of actual 10 drug acquisition cost? 11 MS. TABACCHI: Object to the form, 12 beyond the scope of the Notice. 13 THE WITNESS: As we've said before, 14 Abbott never set AWP, does not set AWP. And so 15 it's something that was out of our control. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Well, Abbott did understand that its 18 list price reporting impacted AWP; didn't it? 19 MS. TABACCHI: Object to the form, 20 beyond the scope, mischaracterizes the witness' 21 prior testimony. 22 THE WITNESS: There may have been a few</p> | <p>1 MS. TABACCHI: Object to the form, 2 beyond the scope of the Notice, asked and 3 answered. 4 THE WITNESS: I think in 1991 and 5 forward Abbott did not have necessarily an opinion 6 on what AWP was represented to be. We didn't set 7 it, we weren't responsible for it. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Did Abbott have any concerns that 10 changes to the AWP based reimbursement system 11 would impact its business? 12 MS. TABACCHI: Object to the form, 13 beyond the scope of the Notice. 14 THE WITNESS: I think the concern here 15 is not necessarily, as stated by Don Robertson, is 16 not necessarily one of AWP as much as it is of 17 looking at a national drug fee schedule and 18 looking ahead and saying a national fee schedule 19 was talked about a number of times in the 1990s, 20 and this may have been just the beginning of it, 21 but a number of times by both HCFA and Congress, 22 especially for generic drugs, had the potential of</p> |
| Page 370 | Page 372 |
| <p>1 people within the division that understood that, 2 but in general they did not, Abbott did not. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Why if in 1991 Abbott had an 5 understanding that AWP was a poor indicator of 6 actual drug costs, did it continue to report its 7 list prices at the levels that it did for the 8 subject drugs? 9 MS. TABACCHI: Object to the form, 10 beyond the scope of the Notice. 11 THE WITNESS: As I've said before, from 12 this time period through, you know, 1999 AWP and 13 reimbursement was not a consideration in terms of 14 what we did with our list prices. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Sir, if you could go to the second 17 paragraph, the second sentence from the bottom 18 beginning "The abandonment of AWP," do you see 19 that, "as a good indicator"? 20 A. Uh-huh. 21 Q. In 1991 did Abbott believe that AWP was 22 a good indicator of product acquisition cost?</p> | <p>1 what's represented here is a continual downward 2 spiral of drug prices. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Why would that impact, why would a 5 national drug fee schedule have a downward spiral 6 for Abbott's drug prices? 7 MS. TABACCHI: Object to the form, 8 beyond the scope. 9 THE WITNESS: Again, I can't speak 10 specifically to this because I haven't read what 11 all the rules were in the attachment, but many 12 times in government programs when they went to 13 look at price controls, there was a constant 14 update that would have driven prices lower in the 15 marketplace. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Would changes to Medicare and Medicaid 18 reimbursement and the methodology for Medicare and 19 Medicaid reimbursement have an impact on Abbott's 20 contract prices? 21 MS. TABACCHI: Object to the form, 22 beyond the scope.</p> |

11 (Pages 369 to 372)

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| <p style="text-align: right;">Page 389</p> <p>1 THE WITNESS: No.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. How come?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: It wasn't an operative</p> <p>7 number for us.</p> <p>8 (WHEREUPON Exhibit Sellers 022</p> <p>9 was marked as of 3/31/2008.)</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Actually, sir, I think that last page,</p> <p>12 is this the last page?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Why don't we take that off because that</p> <p>15 was inadvertently stapled.</p> <p>16 A. Okay. All right.</p> <p>17 Q. Sir, does Abbott recognize this</p> <p>18 document?</p> <p>19 MS. TABACCHI: Objection, beyond the</p> <p>20 scope of the Notice.</p> <p>21 THE WITNESS: I don't recall seeing this</p> <p>22 document before.</p> | <p style="text-align: right;">Page 391</p> <p>1 Q. Is it fair to say that as early as 1996</p> <p>2 Abbott had some indication that there was a</p> <p>3 correlation between its list prices on the subject</p> <p>4 drugs and the high spreads that were being paid as</p> <p>5 part of Medicare and Medicaid reimbursement on the</p> <p>6 subject drugs?</p> <p>7 MS. TABACCHI: Object to the form,</p> <p>8 beyond the scope of the Notice.</p> <p>9 THE WITNESS: Again, I don't think</p> <p>10 within the operating division that there was that</p> <p>11 understanding or any understanding with regard to</p> <p>12 that.</p> <p>13 (WHEREUPON Exhibit Sellers 023</p> <p>14 was marked as of 3/31/2008.)</p> <p>15 MS. ST. PETER-GRIFFITH: Tina, I'll</p> <p>16 represent to you that those are a bunch of loose</p> <p>17 documents that were produced as part of the Bruce</p> <p>18 Rodman production.</p> <p>19 MS. TABACCHI: So they're stapled</p> <p>20 together, but they don't all go together?</p> <p>21 MS. ST. PETER-GRIFFITH: Well, they're</p> <p>22 stapled together because frankly that's sort of</p> |
| <p style="text-align: right;">Page 390</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Why in 1996 in response to the Civil</p> <p>3 Investigative Demand served by the United States</p> <p>4 didn't Abbott lower or consider lowering its list</p> <p>5 prices on the drugs that were referenced in the</p> <p>6 Civil Investigative Demand?</p> <p>7 MS. TABACCHI: Objection, beyond the</p> <p>8 scope, object to the form.</p> <p>9 THE WITNESS: When we originally got the</p> <p>10 investigative demands, outside of maybe someone in</p> <p>11 our legal department, I'm not sure we understood</p> <p>12 what the issues were.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Why didn't you go to the United States</p> <p>15 and ask what the issues were?</p> <p>16 MS. TABACCHI: Objection, beyond the</p> <p>17 scope, object to the form.</p> <p>18 THE WITNESS: We depended on our legal</p> <p>19 counsel, and it was a matter of litigation. So</p> <p>20 that would have been their responsibility if they</p> <p>21 felt it was needed.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p> | <p style="text-align: right;">Page 392</p> <p>1 how they were produced to us.</p> <p>2 MS. TABACCHI: Okay.</p> <p>3 MS. ST. PETER-GRIFFITH: But in going</p> <p>4 through the original box with Mr. Rodman, they</p> <p>5 were all over the place and they were stamped all</p> <p>6 over the place. Believe, me I was equally</p> <p>7 surprised.</p> <p>8 MS. TABACCHI: You're not representing</p> <p>9 that it's one document?</p> <p>10 MS. ST. PETER-GRIFFITH: No, I'm not.</p> <p>11 MS. TABACCHI: It's just what Bruce</p> <p>12 Rodman gave you?</p> <p>13 MS. ST. PETER-GRIFFITH: Right.</p> <p>14 MS. TABACCHI: Got it.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Sir, we're going to get into Home</p> <p>17 Infusion a little bit more in a minute. But</p> <p>18 before I leave the pricing topic, I want to get</p> <p>19 Abbott's understanding, I want you to testify as</p> <p>20 to Abbott's understanding of how AWP factored into</p> <p>21 usual and customary pricing or other pricing</p> <p>22 utilized by the Home Infusion business unit.</p> |

16 (Pages 389 to 392)

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| <p style="text-align: right;">Page 421</p> <p>1 was done through our pharmacies. 2 Q. What was the correlation, if any, 3 between the list price for Abbott Home Infusion on 4 the 50, we'll just assume that it was on the 50 -- 5 A. Okay. 6 Q. -- and the catalog price or list price 7 published by AWP? 8 MS. TABACCHI: Object to the form, 9 beyond the scope of the Notice. 10 THE WITNESS: I'm not sure that there 11 was any functional equivalent. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Do you know what the relationship was 14 between AWP and Abbott Home Infusion list price 15 that's referenced here in this document? 16 MS. TABACCHI: Object to the form, 17 beyond the scope of the Notice. 18 THE WITNESS: Other than what this 19 document says, that's the extent of my knowledge. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Was AWP important to calculating the 22 list price for Abbott's Home Infusion -- strike</p> | <p style="text-align: right;">Page 423</p> <p>1 Q. Does that refresh Abbott's recollection 2 as to what the formula might have been between 3 Abbott's Home Infusion list price calculation and 4 AWP? 5 MS. TABACCHI: Objection, beyond the 6 scope. 7 THE WITNESS: I can only say that's what 8 it says on this memo. I haven't done the 9 calculation. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. I think it would be mean at this stage, 12 sir, to have you do math in your head on the 13 record. 14 A. Thank you. 15 Q. Sir, are you familiar, is Abbott 16 familiar, with the 1995 change in the reporting of 17 its pricing for vancomycin? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Familiar with a 1995 price 20 change done on vancomycin, yes. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. What can you tell me about that price</p> |
| <p style="text-align: right;">Page 422</p> <p>1 that. 2 Was AWP important for calculating 3 the Abbott Home Infusion list price? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: It may have been. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Do you know whether there was a 8 particular formula that was utilized utilizing AWP 9 in calculating the list price? 10 A. I'm not familiar with that detail. 11 Q. But it's your testimony that Abbott 12 never consigned Lupron; is that fair? 13 A. Yes. 14 Q. If you could flip a few pages, maybe 15 eight or nine pages earlier, to BR02422. 16 Sir, this appears to be the same 17 memo we were just looking at, except there's some 18 handwriting under Product, do you see that, where 19 it says "AWP" -- 20 A. Yes. 21 Q. -- "x 1.15"? 22 A. Yes.</p> | <p style="text-align: right;">Page 424</p> <p>1 change? 2 MS. TABACCHI: Object to the form. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Well, let's start with this: Why was it 5 done? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: Well, you'll have to share 8 with me some specifics. I know that vancomycin 9 was part of a catalog price change in 1995. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Why was it part of a catalog -- well, 12 let me ask you this: How many other products had 13 catalog price changes in 1995? 14 A. I'm not sure, but I think probably a 15 good majority of the -- 16 Q. Well, are you familiar with any -- 17 A. -- drugs that were in our catalog at the 18 time. 19 Q. So let me ask you this: When you talk 20 about the 1995 catalog price change, are you 21 talking about a change in Abbott's vancomycin 22 catalog price along with a whole bunch of other</p> |

24 (Pages 421 to 424)

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| <p style="text-align: right;">Page 425</p> <p>1 price changes for Abbott products?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Are you aware of any individual price</p> <p>6 change for vancomycin that occurred in 1995?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I think there was a change</p> <p>9 to the vancomycin prices for a short period of</p> <p>10 time in the spring of 1995.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. What were the circumstances concerning</p> <p>13 that spring of '95 brief vanco price change?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I believe that someone</p> <p>16 from Home Infusion Services had requested of the</p> <p>17 Hospital Business Sector a consideration to reduce</p> <p>18 list price for a few versions of vancomycin. By</p> <p>19 "versions" I'm talking about concentrations,</p> <p>20 delivery forms.</p> <p>21 There was an agreement to reduce</p> <p>22 the prices per that request. That was</p> | <p style="text-align: right;">Page 427</p> <p>1 be versus the lower acquisition cost, when in</p> <p>2 reality they paid more for the product.</p> <p>3 So it was an understanding that if</p> <p>4 we took a reduction, we needed to make sure that</p> <p>5 they were compensated for that reduction on the</p> <p>6 stock they had on their shelves. They should not</p> <p>7 have been penalized because we decided to take a</p> <p>8 reduction.</p> <p>9 Q. Would that occur any time that Abbott</p> <p>10 made a decrease in their list prices?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: In the acquisition cost</p> <p>13 for the wholesaler.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Did Abbott have a particular policy or</p> <p>16 procedure regarding ensuring that there were the</p> <p>17 necessary reserves to cover those situations</p> <p>18 whenever it reduced a price, a list price for a</p> <p>19 product?</p> <p>20 MS. TABACCHI: Object to the form,</p> <p>21 beyond the scope.</p> <p>22 THE WITNESS: It was something that was</p> |
| <p style="text-align: right;">Page 426</p> <p>1 subsequently rescinded.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Why was it rescinded?</p> <p>4 A. I believe in referencing testimony by</p> <p>5 Gerry Eichhorn, that it was rescinded primarily</p> <p>6 because we did not have funds reserved to do a</p> <p>7 price reduction for wholesalers.</p> <p>8 Q. What do you mean by that?</p> <p>9 A. If we were to reduce an acquisition</p> <p>10 price for a wholesaler, we had a practice of</p> <p>11 giving the wholesaler what we called shelf</p> <p>12 adjustment payment.</p> <p>13 So any of the product that we</p> <p>14 reduced the acquisition cost on, whatever stocks</p> <p>15 they had at the time we reduced the acquisition</p> <p>16 cost, we would value the differential in the</p> <p>17 reduction and pay the wholesaler that</p> <p>18 differential.</p> <p>19 The reason we did that was</p> <p>20 otherwise the wholesaler would be penalized by our</p> <p>21 price reduction because their charge-backs from</p> <p>22 the point that we adjusted the price onward would</p> | <p style="text-align: right;">Page 428</p> <p>1 comprehended on any adjustment that we made.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. What testimony from Gerry Eichhorn were</p> <p>4 you referencing that you can recall reviewing?</p> <p>5 A. I believe Gerry Eichhorn testified that</p> <p>6 he had agreed to the price reduction, he had</p> <p>7 communicated the price reduction on the HBS side,</p> <p>8 he had communicated the price reduction to the</p> <p>9 individual in Home Infusion. And subsequent to</p> <p>10 that communication, Harry Adams came in and talked</p> <p>11 to him and instructed him that we couldn't reduce</p> <p>12 the prices because we only did it once a year and</p> <p>13 that it wasn't in the plans.</p> <p>14 Q. Why wasn't it in the plans?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: At that time price</p> <p>17 reductions were not something that were</p> <p>18 comprehended in our annual plans.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Okay. You're talking about the August</p> <p>21 or April update plans?</p> <p>22 MS. TABACCHI: Object to the form.</p> |

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| <p style="text-align: right;">Page 457</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Did anyone within Abbott understand 3 that? 4 MS. TABACCHI: Objection, asked and 5 answered. 6 THE WITNESS: There may have been a few 7 people within Home Infusion reimbursement that had 8 an understanding of how AWP might or might not 9 have been a factor, either plus or minus or an 10 average AWP, whatever, for a specific payor to a 11 specific provider. But as far as Abbott and as 12 far as Abbott HPD is concerned, there wasn't 13 necessarily that understanding. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Well, someone within Abbott -- well, 16 Home Infusion is within Abbott HPD; is it not? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Home Infusion was a very 19 small discreet business unit within HPD. It 20 operated differently than any other business 21 segment. So the vast majority of the HPD sales 22 were to hospitals.</p> | <p style="text-align: right;">Page 459</p> <p>1 THE VIDEOGRAPHER: We are back on the 2 record at 12:34 p.m. with the start of Tape No. 3. 3 MICHAEL SELLERS, 4 having been previously duly sworn, was examined 5 and testified further as follows: 6 EXAMINATION 7 (Continuing) 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Mr. Sellers, I'd like to move on to the 10 Home Infusion operations. 11 A. Okay. 12 Q. Just in your personal capacity, how long 13 were you involved with Abbott's Home Infusion? 14 A. I was the general manager from sometime 15 in 1992, I believe probably May or June, I can't 16 remember which, through to February of 2000. And 17 then subsequent to Don Robertson retiring, I 18 picked up Home Infusion again I think sometime in 19 2001 through to its shutdown. 20 Q. What were the business models for 21 Abbott's Home Infusion business unit from 1991 22 until its closure?</p> |
| <p style="text-align: right;">Page 458</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. But Abbott -- 3 A. So the vast majority of Abbott HPD 4 personnel understood hospitals. Very, very few 5 even were aware that we were selling to anybody 6 other than hospitals. 7 MS. ST. PETER-GRIFFITH: Why don't we 8 take a break at this point in time. Why don't we 9 take a brief lunch break. 10 MS. TABACCHI: Sure. What time do you 11 want to come back? 12 MS. ST. PETER-GRIFFITH: If we can come 13 back at 12:30, that would be great. 14 MS. TABACCHI: Okay. 15 THE VIDEOGRAPHER: We are off the record 16 at 11:55 with the end of Tape 2. 17 (WHEREUPON a lunch recess was 18 taken, and said deposition 19 continued as follows:) 20 21 22</p> | <p style="text-align: right;">Page 460</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Our predominant business 3 model was a contract with hospitals which helped 4 them get into the Home Infusion business. It was 5 intended to be an evolutionary program where 6 upfront we might have provided more services 7 because of the novelty of the program to the 8 hospital entity, and then over time the hospital 9 would gradually take on more and more of those 10 services, and we would take a lesser and lesser 11 role. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Was that the revenue share business 14 model? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: I've heard it referred to 17 as revenue share. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Under the revenue share business model, 20 what would Abbott provide as part of the 21 contractual relationship? 22 A. I believe that we offered a pretty broad</p> |

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| <p style="text-align: right;">Page 481</p> <p>1 White and Bob Parkinson.</p> <p>2 Q. What were the reasons behind the</p> <p>3 decision to close the business unit?</p> <p>4 A. As I said, our revenue had plateaued,</p> <p>5 the market for new clients was drying up. We</p> <p>6 started to use this business model in, as I said,</p> <p>7 '84 I believe is what I told you before.</p> <p>8 So by 1997 it had been thirteen</p> <p>9 years. In that time period, hospitals that wanted</p> <p>10 to get into the business had gotten into the</p> <p>11 business. So we were seeing fewer and fewer</p> <p>12 prospects for future businesses. And those that</p> <p>13 had gotten into the business wanted a more</p> <p>14 independent approach.</p> <p>15 So we saw as we looked at the</p> <p>16 contracts that we had with our existing clients</p> <p>17 that they were going to start that evolution, as I</p> <p>18 said, of ticking away and taking more and more of</p> <p>19 the responsibility. So we were forecasting that</p> <p>20 our sales were going to at best hold and most</p> <p>21 probably decline and that the profitability of</p> <p>22 business would decline. So it didn't make sense</p> | <p style="text-align: right;">Page 483</p> <p>1 our clients. If they wanted to transition earlier</p> <p>2 than the end of their agreement, we would help</p> <p>3 them do that. But if they wanted to live out</p> <p>4 their agreement, we would live out the agreement</p> <p>5 that we had in place.</p> <p>6 Q. From '84 until the closure, was the</p> <p>7 revenue share model the only business model within</p> <p>8 Abbott Home Infusion?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No, but it was the</p> <p>11 predominant one.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. What other business models were there?</p> <p>14 A. Well, we had an agreement in our New</p> <p>15 Jersey pharmacy for a while. We were dealing with</p> <p>16 the Health Insurance Plan of New York, and we were</p> <p>17 delivering for them daily doses of chemotherapy</p> <p>18 for their physician clinics all throughout the New</p> <p>19 York metropolitan area. That wasn't a revenue</p> <p>20 share, it was a purely a fee-for-service type of</p> <p>21 arrangement operating out of our pharmacy.</p> <p>22 There were also some handful of</p> |
| <p style="text-align: right;">Page 482</p> <p>1 to continue it.</p> <p>2 Q. Why didn't it just close in '97? Why</p> <p>3 the phased process?</p> <p>4 A. We talked about that, but to shut it</p> <p>5 down clean, cold, cold turkey shutdown as I would</p> <p>6 call it in '97, we would have had to have gone to</p> <p>7 our clients and said hey, all of these services</p> <p>8 that we're giving you, they're gone tomorrow.</p> <p>9 In light of the fact that the</p> <p>10 majority of our clients, in fact all of our</p> <p>11 clients, were hospitals, hospitals were our</p> <p>12 biggest customer. The Hospital Products Division,</p> <p>13 that's why we were called the Hospital Products</p> <p>14 Division because ninety percent of what we sold</p> <p>15 went to hospitals. We didn't feel that leaving</p> <p>16 our clients in a lurch by just saying we're</p> <p>17 closing down, we're shutting down, was the right</p> <p>18 thing to do.</p> <p>19 So we made the decision that we</p> <p>20 would live out the agreements we had. There were</p> <p>21 some that would expire across the next five years.</p> <p>22 So we made that decision that we would work with</p> | <p style="text-align: right;">Page 484</p> <p>1 what I call holdover patients from back when home</p> <p>2 care was purely a direct provider.</p> <p>3 Q. A direct pharmacy?</p> <p>4 A. Right. And by a handful I mean probably</p> <p>5 less than ten patients across the country that we</p> <p>6 had not transitioned to our clients for one reason</p> <p>7 or another.</p> <p>8 Normally, for instance if we had a</p> <p>9 patient in Michigan and we signed the agreement</p> <p>10 with the University of Michigan, normally we would</p> <p>11 transfer that patient and have the University of</p> <p>12 Michigan handle them, they were much closer to the</p> <p>13 patient, and it would make much more sense. But,</p> <p>14 like I said, there was some residual of long-term</p> <p>15 infusion patients that we were still dealing with,</p> <p>16 a handful, eight to ten at the most.</p> <p>17 Q. Other than the limited fee-for-service</p> <p>18 arrangements that you had and the direct</p> <p>19 pharmacies of less than ten patients, were there</p> <p>20 any other business models for Home Infusion?</p> <p>21 A. The only other one we had was introduced</p> <p>22 probably in '97. And that was with a, again, a</p> |

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| <p style="text-align: right;">Page 485</p> <p>1 very few number of customers, we had a licensing 2 agreement on the CHIP system that didn't include a 3 revenue share, it was a fixed price. 4 Q. When did Abbott pharmacies -- let me ask 5 you this: Did the Abbott pharmacies also close 6 down? 7 A. Yes. 8 MS. TABACCHI: Object to the form. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. When did they close down? 11 A. Variety of time. I believe we closed 12 the New Jersey pharmacy in 1996, and that 13 coincided with our loss of the Health Insurance 14 Plan contract. It was either '96 or early '97, 15 but it was pre-shutdown decision. 16 LA, our pharmacy in LA, was shut 17 down in '98, '99. And I believe our Chicago 18 pharmacy was shut down in 2001. 19 Q. Was there an Atlanta pharmacy? 20 A. The Atlanta pharmacy was shut down prior 21 to 1992 because it was not in operation when I 22 took over.</p> | <p style="text-align: right;">Page 487</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. We talked earlier at your first day of 3 deposition about communications that Abbott had 4 with state or federal Medicare and Medicaid 5 officials about its pricing. And you testified 6 that Abbott did not have any communications with 7 state or federal Medicare or Medicaid officials 8 about questions concerning how Medicare or 9 Medicaid reimbursement worked, is that fair, other 10 than the individual questions raised by the 11 reimbursement staff? 12 MS. TABACCHI: Object to the form, 13 beyond the scope of the Notice. 14 THE WITNESS: I believe that's the case. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Is there any other communication that 17 Abbott is aware of that it had with Medicare or 18 Medicaid officials concerning pricing of the 19 subject drugs or AWP related issues associated 20 with the subject drugs? 21 MS. TABACCHI: Objection, beyond the 22 scope, object to the form.</p> |
| <p style="text-align: right;">Page 486</p> <p>1 Q. Did Abbott continue to maintain its 2 pharmacy licenses? 3 MS. TABACCHI: Objection, beyond the 4 scope. 5 THE WITNESS: No. 6 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Do you know when Abbott surrendered its 9 pharmacy licenses? 10 MS. TABACCHI: Same objection. 11 THE WITNESS: I would assume it to be at 12 or close proximity to the closure. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. To the closure of Home Infusion? 15 A. No, to the closure of whatever specific 16 pharmacy. 17 Q. Is there anything else that you can 18 think of about the Home Infusion business models 19 that we haven't discussed here today? 20 MS. TABACCHI: Objection to the form and 21 beyond the scope. 22 THE WITNESS: No.</p> | <p style="text-align: right;">Page 488</p> <p>1 THE WITNESS: Other than the required 2 communication for the State of Texas, I'm not 3 aware of any communications with regard to price 4 or AWP. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. What information is Abbott aware of that 7 provides the basis for its statement that it never 8 provided false or misleading information to any 9 state or federal Medicare or Medicaid official? 10 MS. TABACCHI: Object to the form, 11 beyond the scope of the Notice. 12 Can you refer me to what topic do 13 you think it falls within? 14 MS. ST. PETER-GRIFFITH: Sure. It falls 15 within Topic 12, Items 1, 2, or 3. 16 MS. TABACCHI: It's my understanding 17 that those topics were withdrawn. 18 MS. ST. PETER-GRIFFITH: That they were 19 withdrawn? 20 MS. TABACCHI: Yes, based on the 21 communications and the correspondence back and 22 forth with you, I believe, on these topics that</p> |

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| <p style="text-align: right;">Page 601</p> <p>1 situation to continue?</p> <p>2 MS. TABACCHI: Object to the form,</p> <p>3 beyond the scope.</p> <p>4 THE WITNESS: Again, I think it</p> <p>5 highlights the "inadvertent" that I used before.</p> <p>6 It highlights the fact that the people that were</p> <p>7 controlling the list price had no knowledge of</p> <p>8 what relationship list price had to anything. So</p> <p>9 when Lily reduced its price, they wondered what</p> <p>10 tactic Lily was using, they couldn't figure out</p> <p>11 one, we were continuing to sell our product, so</p> <p>12 they just let, it got dropped.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. And that's your testimony on behalf of</p> <p>15 the corporation despite the analysis that was</p> <p>16 conducted and the actions that were taken in</p> <p>17 decreasing list prices on vanco in 1995 and then</p> <p>18 subsequently re-increasing those list prices?</p> <p>19 MS. TABACCHI: Object to the form,</p> <p>20 beyond the scope.</p> <p>21 THE WITNESS: Again, they were discreet</p> <p>22 separate actions, probably handled by different</p> | <p style="text-align: right;">Page 603</p> <p>1 Q. They were there from 1991 all the way</p> <p>2 through 2003?</p> <p>3 A. Yes.</p> <p>4 Q. So there was some continuity there;</p> <p>5 wasn't there?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: There was. They weren't</p> <p>8 price decision making decisions.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Harry wasn't a price decision maker?</p> <p>11 A. No.</p> <p>12 Q. Jerrie was the point of contact when all</p> <p>13 of the catalog and list prices were published;</p> <p>14 wasn't she?</p> <p>15 A. Yes.</p> <p>16 Q. Sir, is it your testimony that Abbott's</p> <p>17 reason for the list prices was to garner some</p> <p>18 incremental sales albeit less than one percent</p> <p>19 list price?</p> <p>20 MS. TABACCHI: Object to the form, asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: I'm not sure I understand</p> |
| <p style="text-align: right;">Page 602</p> <p>1 people.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Why do you say "probably"?</p> <p>4 MS. TABACCHI: Object to the form,</p> <p>5 beyond the scope.</p> <p>6 THE WITNESS: Because we typically moved</p> <p>7 managers through Contract Marketing pretty</p> <p>8 regularly. Contract Marketing was a management</p> <p>9 training position.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Harry Adams never left; did he?</p> <p>12 MS. TABACCHI: Objection, beyond the</p> <p>13 scope.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Jerrie Cicerale never left; did she?</p> <p>17 A. No.</p> <p>18 Q. They were there for well over a decade;</p> <p>19 weren't they?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. ANDERSON:</p> | <p style="text-align: right;">Page 604</p> <p>1 your question.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Well, is Abbott's purpose in having list</p> <p>4 prices to sell at list price?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Our list price was</p> <p>7 intended for customers who did not have a contract</p> <p>8 with Abbott who bought directly from Abbott. So</p> <p>9 that was the purpose of our list price, yes.</p> <p>10</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. And you quantified it as less than one</p> <p>13 percent of the sales; correct?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: In 2001. I qualified it</p> <p>16 as saying that was in a document that I authored</p> <p>17 in 2001.</p> <p>18 I also said in past testimony that</p> <p>19 I believe that percentage changed. If you look at</p> <p>20 the period 1991 on, I believe it was higher in</p> <p>21 around 1991.</p> <p>22 It also changed year to year based</p> |

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| <p style="text-align: right;">Page 665</p> <p>1 AWP?</p> <p>2 MS. TABACCHI: Object to the form,</p> <p>3 beyond the scope.</p> <p>4 THE WITNESS: I don't necessarily think</p> <p>5 we talked about cared here. We were just, there</p> <p>6 were some questions that came in with regard to</p> <p>7 gee, the AWP's went down, is that what you intended</p> <p>8 to do.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. And what was the response?</p> <p>11 MS. TABACCHI: Same objections.</p> <p>12 THE WITNESS: I think by virtue of this</p> <p>13 letter what I was, or this voicemail, I was</p> <p>14 telling people hey, be aware of it, these are the</p> <p>15 prices that are going to be effective May 7th. So</p> <p>16 don't choke on it, respond that yes, we have</p> <p>17 planned, we have changed prices and those are the</p> <p>18 prices that are out there.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. And is Exhibit 36 the kind of follow-up</p> <p>21 question and answer, or what's known as</p> <p>22 "Frequently Asked Questions" that you created to</p> | <p style="text-align: right;">Page 667</p> <p>1 morning that we were going to end at 5:00, we took</p> <p>2 a short lunch, and it's after 5:00.</p> <p>3 MR. ANDERSON: Well, we are reserving</p> <p>4 all rights.</p> <p>5 MS. TABACCHI: Of course you are.</p> <p>6 MR. ANDERSON: We're not agreeing that</p> <p>7 the deposition is concluded.</p> <p>8 THE VIDEOGRAPHER: We are off the record</p> <p>9 at 5:04 p.m. with the conclusion of today's</p> <p>10 deposition of Mike Sellers.</p> <p>11 (WHEREUPON said deposition was so</p> <p>12 adjourned.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">SIGNATURE OF THE WITNESS</p> <p>Subscribed and sworn to and before me</p> <p>this _____ day of _____, 20____.</p> <p>_____ Notary Public</p> |
| <p style="text-align: right;">Page 666</p> <p>1 help address customer concerns about decreased</p> <p>2 reimbursement?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Yes, I believe. And this</p> <p>5 was published May 1st, a week before the catalog</p> <p>6 went out, and was intended to arm our people with</p> <p>7 information.</p> <p>8 It's always good that your</p> <p>9 salespeople know something before the customers</p> <p>10 know it. So that's why we tried to do that. The</p> <p>11 catalog, as I said, came out May 7th, the official</p> <p>12 prices would become effective May 7th.</p> <p>13 I don't know what date this was</p> <p>14 done, I can't tell from here, but it was before</p> <p>15 the May 1st notice.</p> <p>16 MR. ANDERSON: I could go a long time.</p> <p>17 MS. TABACCHI: You could go forever, I</p> <p>18 appreciate that, but it is after 5:00. So do you</p> <p>19 want to make a speech or --</p> <p>20 MR. ANDERSON: No. If you want to stop</p> <p>21 the deposition, that's your prerogative.</p> <p>22 MS. TABACCHI: We advised you this</p> | <p style="text-align: right;">Page 668</p> <p>1 STATE OF ILLINOIS)</p> <p>2 COUNTY OF C O O K)</p> <p>3 I, Donna M. Kazaitis, RPR, CSR No.</p> <p>4 084-003145, do hereby certify:</p> <p>5 That the foregoing deposition of MICHAEL</p> <p>6 SELLERS was taken before me at the time and place</p> <p>7 therein set forth, at which time the witness was</p> <p>8 put under oath by me;</p> <p>9 That the testimony of the witness and all</p> <p>10 objections made at the time of the examination</p> <p>11 were recorded stenographically by me, were</p> <p>12 thereafter transcribed under my direction and</p> <p>13 supervision and that the foregoing is a true</p> <p>14 record of same.</p> <p>15 I further certify that I am neither counsel</p> <p>16 for nor related to any party to said action, nor</p> <p>17 in any way interested in the outcome thereof.</p> <p>18 IN WITNESS WHEREOF, I have subscribed my name</p> <p>19 this 4th day of April, 2008.</p> <p>20</p> <p>21</p> <p>22 Donna M. Kazaitis, RPR, CSR 084-003145</p> |

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